TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, [redacted] 1926

No. [redacted] 275

BENJAMIN H. CLARK AND CHARLES RIGGS, A PARTNERSHIP DOING BUSINESS UNDER THE FIRM NAME OF CLARK AND RIGGS, APPELLANTS,

vs.

GEORGE T. POOR, C. C. MARSHALL, AND FRANK B. MAULLAR, CONSTITUTING THE PUBLIC UTILITIES COMMISSION OF OHIO

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF OHIO

FILED JANUARY 31, 1927

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1925

No. 906

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[fol. 1]

IN UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF OHIO, EASTERN DIVISION

No. 385

BENJAMIN H. CLARK and CHARLES RIGGS, a Partnership, Doing Business under the Firm Name of Clark and Riggs, Complainants,

vs.

GEORGE T. POOR, C. C. MARSHALL, and FRANK B. MAULLAR, Constituting the Public Utilities Commission of the State of Ohio, Defendants

BILL OF COMPLAINT—Filed August 7, 1925

Complainants herein are Benjamin H. Clark and Charles Riggs and say that they were at all times hereinafter mentioned, have been, and now are citizens of the State of Indiana, residing in the City of Aurora, Dearborn County, in said State, and are partners, doing business under the firm name of Clark and Riggs, with their office and principal place of business in said City of Aurora, Dearborn County, Indiana.

George T. Poor, C. C. Marshall and Frank B. Maullar, constituting the Public Utilities Commission of the State of Ohio, were and are citizens of the State of Ohio, residing in Franklin County, in said State of Ohio, and in the Southern District, Eastern Division thereof.

This section is one of a civil nature, arising under the Constitution of the United States, and the amount in controversy herein, exclusive of interest and costs, exceeds the [fol. 2] sum of Three Thousand ($3,000.00) Dollars.

Complainants say that they bring this action for themselves and on behalf of all other persons, firms and corporations in the same class, doing a similar business to that of these complainants as hereinafter set forth.

Complainants further say that they now are and have been for the past three years engaged in business as common carriers of goods, wares and merchandise for hire under the firm name of Clark and Riggs, a partnership,

having their office and principal place of business at Aurora, Indiana; that as a part of said business they own and operate several motor vehicles which they use in the transportation of the goods, wares and merchandise of their customers between Aurora, Indiana, and other cities and points in Indiana and also between Aurora, Indiana, and Cincinnati, Ohio; that they have invested in said business a large amount of capital and employ a large number of persons; that they have paid all license fees and have done and performed all other things required by the laws of the State of Indiana for the operation of said motor vehicles and have received from the State of Indiana the necessary license tags to enable them to operate said motor vehicles upon the streets and highways of the State of Indiana.

Complainants further say that their said motor vehicles make regular and irregular trips from Aurora, Indiana, to Cincinnati, Ohio, transporting to Cincinnati, Ohio, the goods and merchandise of their customers received at Aurora and other points in Indiana, and transporting from Cincinnati, Ohio, goods and merchandise received in Cincinnati, Ohio; to their customers in Indiana; that their said transportation business, as such common carriers for hire, is exclusively interstate so far as the State of Ohio is concerned, and that they do not receive, transport or deliver any goods, wares or merchandise in intrastate commerce between points solely in the State of Ohio.

[fol. 3] Complainants further say that during the period of their operation for more than three years last past, their patronage has constantly increased to such an extent that said business now has a great value, one considerably in excess of Three Thousand ($3,000.00) Dollars.

Complainants further say that the legislature of the State of Ohio on March 29, 1923, passed an Act generally known as the Freeman Collister Law, which became effective April 28, 1923, and which was amended by Acts passed February 25, 1925, effective June 15, 1925, Senate Bill #1, and April 17, 1925, effective August 4, 1925, House Bill #80. Said Act and the amendments thereto are designated as Sections 614-84 to 614-102, inclusive, of the General Code of Ohio.

Said Act, so amended, provides, among other things, that no motor transportation company shall operate any motor

propelled vehicle for the transportation of persons or property or both, for hire, on any public highway in Ohio, except in accordance with the provisions of said Act; that no motor transportation company shall begin to operate any motor propelled vehicle for the transportation of persons or property or both, for hire, between fixed termini or over a regular or irregular routes in the State of Ohio without first obtaining from the Public Utilities Commission a certificate declaring that public convenience and necessity require such operation; that the Public Utilities Commission of the State of Ohio is vested with power and authority to supervise and regulate each such motor transportation company in Ohio, to fix, alter and regulate rates, to regulate the services and safety of operation of each such motor transportation company, to prescribe safety regulations and designate stops for services and safety on established routes, to require the filing of annual and other reports and of other data by such motor transportation companies, to provide uniform accounting systems and to supervise [fol. 4] and regulate motor transportation companies in all matters affecting the relationship between such companies and the public; that said Commission shall adopt rules, prescribe the manner and form in which such motor transportation companies shall apply for the certificates of public convenience and necessity, and that among other rules adopted there shall be the following:

A. Application shall be made in writing on the blanks furnished by the commission and shall show the principal office or place of business and residence of such motor transportation company.

B. Shall contain full information concerning the physical property used or to be used by the applicants.

C. The complete route over which the applicant operates or desires to operate, showing the number of miles of said route in each municipality and county.

D. The proposed time schedule or schedules or time cards of the applicant, if operating between fixed termini or over a regular route.

E. The schedule or tariff showing the passenger or freight rates to be charged between the several points, if operating between fixed termini or over a regular route.

Said Act, so amended, further provides that said application shall contain other information such as maps, showing the highway or highways and public places upon and over which such motor transportation company is to operate, and the number and kind of motor vehicles to be used; that the applicant shall give notice by publication in a newspaper, once a week for three consecutive weeks, of the fact that such an application has been filed and will be heard by said commission; and that said commission shall fix a date for the hearing of said application and give notice thereof to the applicant and all other motor transportation companies operating in the same territory.

Said Act, so amended, further provides that such motor transportation company shall at the time of the issuance of such certificate of convenience and necessity, and annually [fol. 5] thereafter, on or between January 1st and January 15th of each calendar year, pay to the Treasurer of the State of Ohio certain taxes for the expense of the administration and enforcement of the provisions of said act and for the maintenance and repair of the highways of the state, fifty (50%) per cent of which taxes shall be apportioned to the municipal corporations and counties into, through or along which the route of each such motor transportation company runs, or extends, in accordance with the lineal miles of route in each, and that the remaining fifty (50%) per cent shall belong to the State of Ohio and be paid into the State Treasury to the credit of the State Maintenance and Repair Fund.

Said Act, as amended, further provides that no certificate of convenience and necessity shall be issued by the commission to any motor transportation company until it shall have filed with the commission a liability insurance policy or bond, satisfactory to the commission, in such sum and with such other terms and provisions as the commission may deem necessary adequately to protect the interests of the public having due regard for the number of persons and amount of property affected, which policy, policies or bonds shall insure the motor transportation company against loss sustained by reason of the death of or injury to persons and for loss of or damage to property resulting from the negligence of such motor transportation company, and shall have filed with the commission a freight cargo insurance policy or bond adequately to protect the interests

of the shipping public, which policy or bond shall insure the motor transportation company against all loss in excess of Fifty ($50.00) Dollars sustained by reason of any loss or damage to the property being transported.

Said Act, so amended, further provides that every officer, agent or employee of any corporation, and every other person who violates or fails to comply with or who procures, [fol. 6] aids or abets in the violation of provision of sections 614-84 to 614-102, inclusive, of the General Code of Ohio, or who fails to obey, observe or comply with any order, decision, rule or regulation, direction, demand or requirement, or any part or provision thereof, of the Public Utilities Commission, or who procures, aids or abets any corporation or person in his failure to obey, observe or comply with any such order, decision, demand or regulation, or any part or provision thereof, shall be deemed guilty of a misdemeanor and, upon conviction, shall be punished by a fine not exceeding One Thousand ($1,000.00) Dollars, or by imprisonment in the county jail not exceeding one year, or by both such fine and imprisonment.

Said Act, so amended, further provides that none of said sections 614-84 to 614-102, inclusive, of the General Code of Ohio, shall apply or be construed to apply to commerce with foreign nations or countries, or among the several states of the Union, except in so far as the same may be permitted under the provisions of the Constitution of the United States and the Acts of Congress.

Complainants aver that the defendants, constituting the Public Utilities Commission of the State of Ohio, are undertaking to enforce the provisions of said law against these plaintiffs and all other common carriers for hire, doing an interstate business exclusively, who enter the State of Ohio, and particularly those sections requiring the plaintiffs to obtain a certificate of convenience and public necessity to pay the taxes specified in General Code of Ohio, section 614-94, and to give the bond provided in General Code of Ohio, section 614,99, and have notified these complainants that unless they comply with the provisions of said Act and the regulations of said Commission, and obtain a certicate of public convenience and necessity, pay said taxes and give such bond, said Commission will cause their vehicles to be stopped on the highways in the State of Ohio and their

drivers to be arrested by state police and local officers and [fol. 7] the prescribed penalities to be imposed upon them; that said defendants have already caused the vehicles of numerous persons similarly operating motor vehicles, exclusively in interstate commerce, to be stopped, their drivers arrested and the prescribed penalties imposed for not complying with the provisions of said act, and that unless restrained by this Court, said defendants, as such Commission, will continue to enforce said Act and cause the vehicles of these plaintiffs, and those of all others similarly operating, to be stopped on the highways in the State of Ohio, the drivers to be arrested and the prescribed penalties imposed upon them every time any such vehicle enters the State of Ohio upon one of its state highways from the State of Indiana, thereby subjecting them to innumerable criminal prosecutions and to the imposition of the heavy penalties prescribed by said law.

Complainants further say that the enforcement of said law as aforesaid against them, and against those similarly situated, on whose behalf complainants also sue, will cause them and such others irreparable damage and injury, loss of their patronage, the destruction of their businesses and the loss of a substantial part of their capital invested in such businesses, for which they have no adequate remedy at law.

Complainants further say that such enforcement, as aforesaid, of said law is in violation of Section 8, Article 1 of the Constitution of the United States, and of the 14th Amendment thereto, in that it is an abridgement of the privileges and immunities of citizens of the United States, is a deprivation of property without due process of law, and is an unreasonable interference with and a burden upon interstate commerce.

Wherefore, complainants pray that a writ of subpena issue herein directed to the above named defendants, re- [fol. 8] quiring them to answer the averments of this Bill of Complaint, but not under oath, the same being expressly waived; that said defendants and each of them, their agents, servants, employees, subordinates, deputies and inspectors, and each and every of them, be enjoined and restrained from, in any manner, enforcing or attempting to enforce, causing to be enforced or aiding others to enforce

against complainants and against all others on whose behalf they have sued, or their agents, servants and employees, said law known as the Freeman-Collister Law contained in Sections 614-84 to 614-102 inclusive of the General Code of Ohio; from stopping, attempting to stop, causing to be stopped, or aiding others to stop their motor vehicles while transporting goods or merchandise in interstate commerce; from arresting or causing to be arrested or aiding others to arrest the owners of such vehicles or their drivers, agents, servants or employees; from instituting or causing to be instituted or aiding others to institute any criminal prosecutions against them and from prosecuting or aiding others to prosecute any criminal proceedings now pending against these complainants or any of those on whose behalf this suit is brought.

Complainants further pray that they be granted a temporary restraining order, pending further hearing of this cause, whereby the said defendants, their agents, servants, subordinates, employees, deputies and inspectors, and each and every of them, be enjoined and restrained as herein before prayed, in order to prevent irreparable loss and damage to complainants and all others on whose behalf they sue; that pursuant to the provisions of section 266 of the Judicial Code (Act of June 18, 1910, c. 309, section 17, 36 Stat. 557, as amended), upon notice being given as required by said statute, complainants be granted an interlocutory injunction, pending the final hearing and decision of this cause, whereby the said defendants, their agents, servants, subordinates, employees, deputies and inspectors, and each [fol. 9] and every of them, be enjoined and restrained as hereinbefore prayed, and that upon final hearing, the said injunction be made perpetual; for their costs herein expended and for such other and further relief as to the court may seem just and equitable in the premises.

Bettinger, Schmitt & Kreis, Paxton, Warrington & Lensongood, Solicitors for Complainants. Walter Schmitt, Lester A. Joffe, of Counsel for Complainants.

Duly sworn to by Benjamin H. Clark. Jurat omitted in printing.

[fol. 9a] [File endorsement omitted.]

[fol. 10] Summons and marshal's return omitted in printing.

[fol. 11] In United States District Court

[Title omitted]

Order Allowing Temporary Restraining Order—Filed August 7, 1925

This day this cause came on to be heard upon the application of complainants herein for a temporary restraining order and was submitted to the court, upon consideration whereof the court does hereby grant the same, returnable Saturday, August 15, 1925, and upon giving of a surety bond in the amount of $1,000, satisfactory to the clerk, it is ordered that a temporary restraining order issue against George T. Poor, C. C. Marshall and Frank B. Maullar, constituting the Public Utilities Commission of the State of Ohio, defendants herein, restraining said defendants and each of them, their agents, servants, employees, subordinates, deputies and inspectors, and each and every of them, from, in any manner, enforcing or attempting to enforce, causing to be enforced or aiding others to enforce against complainants or their agents, servants and employees, the law known as the Freeman-Collister Law contained in Sections 614-84 to 614-102, inculsive, of the General Code of Ohio; from stopping, attempting to stop, causing to be [fol. 12] stopped, or aiding others to stop their motor vehicles while transporting goods or merchandise in interstate commerce; from arresting or causing to be arrested or aiding others to arrest the owners of such vehicles or their drivers, agents, servants or employees; from instituting or causing to be instituted or aiding others to institute any criminal prosecution against them and from prosecuting or aiding others to prosecute any criminal proceedings now pending against these complainants.

It is further ordered that a copy of this temporary restraining order be served by the marshal of this court upon said defendants.

(Signed) Benson W. Hough, Judge.

8/7/25.

MARSHAL'S RETURN—Filed August 22, 1925

Received this Certified Copy of Entry on August 7, 1925, and on August 10, 1925, served same by delivering a true and duly certified copy hereof to George T. Poor, C. C. Marshall and Frank B. Maullar, constituting the Public Utilities Commission of the State of Ohio, by delivering same to each personally at Columbus, Ohio.

Stanley Borthwick, U. S. Marshal S. D. O., by Forbes B. Lampman, Deputy, by J. Norrish, Deputy.

Fees:

3 services	$6 00
1 mi.	06
Total	$6 06

[fol. 13] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER CONTINUING HEARING—Filed August 15, 1925

For good cause shown, the hearing of the application for an interlocutory injunction is hereby continued until September 5, 1925.

Hough, Judge.

8/15/25.

Have seen.

Bettinger, Schmitt & Kreis, Paxton, Warrington & Seasongood, Solicitor for Complaint. Wilbur E. Benery, Special Counsel for Defendants.

[fol. 14] In United States District Court

[Title omitted]

Order Extending Temporary Restraining Order and Continuing Hearing—Filed September 5, 1925

Upon application of the plaintiffs, and for good cause shown, the temporary restraining order heretofore issued herein is hereby extended to the 8th day of September, 1925, at ten o'clock A. M., and the hearing upon the application for a preliminary injunction is also extended to said time.

Benson W. Hough, Judge.

[fol. 15] In United States District Court

[Title omitted]

Answer—Filed September 8, 1925

Now come the defendants, George T. Poor, C. C. Marshall and Frank B. Maullar, and for want of information deny that Benjamin H. Clark and Charles Riggs are citizens of the State of Indiana, doing business under the firm name of Clark and Riggs and that their office and principal place of business is in the City of Aurora, Dearborn County, Indiana.

The defendants admit that they are all citizens of the State of Ohio, residing in Franklin County.

Defendants deny that the amount of controversy herein, exclusive of interest and costs, exceeds the sum of Three Thousand Dollars ($3,000.00).

For want of information the defendants deny that the complainants have been operating for the past three (3) years as common carriers of goods, wares and merchandise for hire.

They further deny for want of information the allega-
[fol. 16] tions contained in the fifth paragraph of the complainants' bill of complaint in regard to the nature and conduct of the business conducted by the complainants, their actions in Indiana in complying with the statutes in

that State, payment of fees and as to the securing of necessary license to operate over the streets and highways of Indiana.

Defendants admit the allegations of the sixth paragraph of the bill of complaint alleging the operation between Aurora, Indiana, and Cincinnati, Ohio, and for want of information deny that the operation is exclusively interstate. The defendants admit the enactment by the General Assembly of the State of Ohio of the Motor Bus Law, as alleged in the eighth paragraph of plaintiff's complaint.

The defendants admit that they, acting as The Public Utilities Commission of Ohio, are undertaking to enforce the provisions of the Motor Transportation Law of Ohio; that they are specifically charged with such duty but deny that they have in any way attempted to interfere with or that they have interfered with interstate commerce conducted by the complainants or any other parties.

Defendants deny that they have caused the complainants or their agents to be arrested by the State Police or local officers and deny that said Commission has any jurisdiction over said police or local officers.

The defendants further deny that the complainants are being subjected, or will be subjected, to innumerable criminal prosecutions or to heavy penalties and further deny that any irreparable damage or injury, loss of patronage or business will be incurred by the complainants and further allege that the complainants have an adequate remedy at law for any such action as might be taken against them.

Defendants further say that enforcement of the law is not in violation of the Constitution of the United States and deny that it would amount to a deprivation of property without due process of law or that the enforcement of the same would be an irreparable interference with or burden upon interstate commerce.

[fol. 17] Wherefore defendants pray that the complaint herein may be dismissed; that the temporary restraining order heretofore granted may be dissolved and that the defendants, acting as The Public Utilities Commission of Ohio, may go hence without costs.

The Public Utilties Commission of Ohio. C. C. Crabbe, Attorney General. John W. Bricker, Attorney for the Public Utilities Com. of Ohio.

[fol. 18] In United States District Court

[Title omitted]

Order Extending Temporary Restraining Order and Continuing Hearing—Filed September 8, 1925

This day this cause came on to be heard before the Honorable Maurice H. Donahue, Judge of the United States Circuit Court of Appeals for the Sixth Circuit, and the Honorable D. C. Westenhaver and the Honorable Benson W. Hough, District Judges; and for good cause shown, the hearing upon the application for an interlocutory injunction is hereby extended to September 15th, 1925.

Upon application of the plaintiffs, the temporary restraining order heretofore issued herein is hereby extended and shall remain in force until the hearing and determination of the application for the interlocutory injunction.

Sept. 8, 1925.

Maurice H. Donahue, Circuit Judge.

[fol. 19] In United States District Court

[Title omitted]

Affidavit of Benjamin H. Clark—Filed September 17, 1925

State of Indiana,
County of Dearborn, ss:

Benjamin H. Clark, being first duly sworn, says that he and Charles Riggs, complainants herein, are citizens of the State of Indiana, doing business under the firm name of Clark and Riggs with their principal place of business in the City of Aurora, Indiana, and that the defendants constituting the Public Utilities Commission of the State of Ohio, are all citizens of the State of Ohio, residing in Franklin County.

That complainants are now, and for more than three years have been engaged as common carriers of goods by motor transportation in trucks between Aurora, Indiana, and other points in said State and Cincinnati, Ohio, and

that in no case do they carry goods where the transportation begins and ends in the State of Ohio.

That approximately 95% of their business consists of the transportation of goods between Cincinnati, Ohio, and Aurora, Indiana, and other points in said State; that during said period of three years their said business has [fol. 20] gradually increased both as to volume and net earnings, their net earnings during the said period being in excess of Fifteen Thousand ($15,000.00) Dollars, all of which earnings were left in the business and used for the purchase of new equipment and other facilities for conducting said business which all has a value today in excess of Fifteen Thousand ($15,000.00) Dollars without including the value of the Good Will and Trade which by their hard efforts they have been able to build up; that the net earnings from said inter-state business are in excess of Three Hundred ($300.00) Dollars per month, and that the loss to them incident to the enforcement of a motor transportation law by defendants would exceed the sum of Ten Thousand ($10,000.00) Dollars, that being the value of their inter-state business which would be destroyed by reason of the enforcement of said law.

That this affiant upon learning that the defendants acting through its inspectors were engaged in arresting other carriers doing an inter-state business and causing them to be tried, convicted and fined, called upon one — Crawford, an inspector for the defendants, operating in Cincinnati, Ohio, and who was making daily reports of his activities to the defendants, and asked him whether his firm had the right to operate its trucks upon the state highways in Ohio in inter-state commerce; that he was advised by said Crawford that he was subject to all the terms and conditions of the Motor Transportation Act referred to in the Bill of Complaint, and that it would be necessary for him to apply to the Public Utilities Commission of Ohio for a Certificate of Convenience and Necessity; that complainants would be required to pay the taxes upon its vehicles so operated, and to take out the insurance or furnish a bond of indemnity and do all other things, as required by said act, and that unless he did this the drivers of his [fols. 21 & 21a] trucks would be arrested every time they were found on the Ohio State Highway and brought to trial for violation of said act; that said Crawford gave him

a form of application with instructions to fill the same out and send it to the Public Utilities Commission.

That quite a number of other drivers operating their trucks in inter-state commerce were arrested, tried and convicted before the Mayor of Cleves, Ohio, and fined.

Benjamin H. Clark.

Sworn to before me and subscribed in my presence this —— day of September, 1925. Crawford A. Peters, Notary Public, Dearborn County, Indiana. My commission expires January 1st, 1927. (Seal Notary Public, Dearborn County, Indiana.)

[File endorsement omitted.]

[fol. 22] In United States District Court

[Title omitted]

Affidavit of Samuel Herndon—Filed September 17, 1925

State of Ohio,
Hamilton County, ss:

Samuel Herndon, being first duly sworn, says that he is the manager of the Traffic Department of the Chamber of Commerce of Cincinnati, Ohio; that early in July, 1925, numerous complaints were made to him by common carriers of merchandise engaged in inter-state commerce between points in Indiana and Cincinnati, Ohio, and also from many business concerns of Cincinnati, that the Public Utilities Commission of Ohio, acting through its inspectors, were stopping these carriers on the Ohio State Highways as they entered from the State of Indiana, and were ordering them to discontinue operating in Ohio unless they applied to the Public Utilities Commission of Ohio for a Certificate of Convenience and necessity, paid the taxes, gave an indemnity bond or took out insurance and complied with all the other provisions prescribed by the Ohio Motor Transportation law, and that if they failed to do so, such carriers would be arrested every time they operated upon a highway in the State of Ohio for a viola-

tion of said law, and would be brought to trial and subjected to the penalties prescribed by said law; that he received other complaints that a number of such carriers had been arrested and taken before the Mayor of the Village of [fol. 23] Cleves, near Cincinnati, Ohio, tried and fined because they had operated without complying with said law.

That he immediately communicated with the Public Utilities Commission of Ohio to ascertain their attitude under said Motor Transportation law as to inter-state carriers and what instructions the Commission had given its inspectors with reference thereto, and that on July 11, 1925, he received a reply from said Public Utilities Commission of Ohio, of which the following is a true and complete copy:

"The Public Utilities Commission of Ohio, Columbus

C. C. Marshall, Chairman; F. B. Maullar, Geo. T. Poor, Commissioners; J. B. Dugan, Acting Secretary; Jno. W. Bricker, Attorney

July 11, 1925.

Motor Transportation Companies, Cincinnati, Ohio; Samuel Herndon, Esq., Acting Mngr. Traffic Department, Chamber of Commerce, Cincinnati, Ohio.

Dear Sir: Your communication of July ninth, directed to myself as Chairman of The Public Utilities Commission of Ohio, is at hand, wherein you complain of the manner in which the Inspectors of our Commission are conducting their investigation of breaches of the Freeman-Collister Law in Cincinnati and vicinity.

You state that your people are very much concerned about the action of our Inspectors, and request us to advise you the instructions the Inspectors are operating under, and ask, also, that we instruct them to be somewhat lenient with interstate operators until their exact status has been determined.

In reply to your first inquiry, I desire to say that we had so many complaints from duly certificated truck and bus operators in Cincinnati, who have legally qualified and paid to the State their taxes, that many illegal operators were injuring their business, that we deemed it only just and right to make an investigation in the vicinity through our Inspectors and protect all those who were legally opera-

ting and stop the illegal operations. These were the in-
[fol. 24] structions given to our Inspectors, and they will be carried out.

We have considered all the decisions of the Supreme Court of the United States in relation to interstate operations and are familiar with the respective decisions of the federal and state courts, and are of the opinion that we have no right, legally, to refuse any applicant a certificate to operate a wholly interstate Motor Transportation Company. We are also of the opinion that legally, under the decisions, it is the duty of every interstate operator to apply to this Commission for a certificate and be certificated to so operate within the State of Ohio before beginning such operations.

As to farmers who operate their individual trucks in the conduct of their own business in marketing their produce: So long as the major portion of their operations is conducted for their own business, and any hauling otherwise is only of casual quantity, they are not guilty of a breach of the Freeman-Collister Law, and we have so instructed all of our Inspectors, but if said farmers are holding themselves out to do a general trucking business in connection with their own business, they must be certificated by this Commission to so operate or they are guilty of a breach of the laws of the State, and this Commission cannot and will not sanction their illegal operations.

We realize that the Chamber of Commerce of Cincinnati, through its officers, may be seeking to protect your city, but this Commission cannot extend any leniency to law-breakers when the fact is so patent to everybody that many of these operations are illegal and, as a matter of fact, many of your law abiding citizens have qualified and paid large amounts into the State Treasury to legally operate, and, as far as this Commission is concerned, its attitude is that they are entitled to protection and the law-breakers to prosecution.

Yours very truly, The Public Utilities Commission of Ohio. Chas. C. Marshall, Chairman."

DSA.

That subsequent to the receipt of this letter he got into communication with one Edward A. Crawford, one of the inspectors for the Public Utilities Commission of Ohio, who

was engaged in making the investigations in the vicinity of Cincinnati as stated in the above quoted letter, and in causing the arrests and trials of inter-state carriers as aforesaid; that an interview was arranged with said Crawford [fol. 25] for the purpose of ascertaining just what attitude he, as such inspector was taking with reference to inter-state carriers; that at such conference he was advised by said Crawford who was at that time acting as inspector for the Public Utilities Commission of Ohio, in accordance with the terms outlined in the above quoted letter, that the Public Utilities Commission had instructed him to make an investigation in the city of Cincinnati and vicinity to ascertain whether the owners and operators of motor vehicles upon the highways of the State of Ohio and vicinity whether engaged in intra or inter-state commerce were complying with said Motor Transportation Law of Ohio, commonly known as the Freeman-Collister Law, and that if he found any such owners or operators operating in violation of said law to order them to take all the necessary steps to comply with said law, and upon their failure to do so, to cause them to be arrested every time they operated upon said Ohio highways; and that it was his purpose to comply with said instructions and to continue said investigation and to cause said operators either to comply with the law or to be arrested for its violation.

That subsequent to said interview, said Crawford did continue his investigations and did cause the arrests of several inter-state carriers because of their failure to comply with said law, until the issuance of the injunction in this cause.

Samuel Herndon.

Sworn to before me and subscribed in my presence this 14th day of September, 1925. Walter Schmitt, Notary Public, Hamilton County, Ohio. (Notarial Seal of Hamilton County, Ohio.)

[fol. 26] [File endorsement omitted.]

[fol. 27] In United States District Court

[Title omitted]

Affidavit of Charles C. Marshall, George T. Poor and Frank B. Maullar—Filed September 17, 1925

C. C. Marshall, George T. Poor, and Frank B. Maullar, being first duly sworn, say that they are the members of the Public Utilities Commission of Ohio and that acting as such Public Utilities Commission in the interpretation and application of the motor transportation law of Ohio, being General Code Section 614-84 to Section 614-102, the Commission has held that it does not have jurisdiction to enter into the question of convenience and necessity before issuing a Certificate to operate an interstate transportation company.

Affiants say that this interpretation of the law arises under Section 614-101, reading as follows:

"Neither sections 614-84 to 614-102, inclusive, of the General Code, nor any provisions thereof, shall apply or be construed to apply to commerce with foreign nations or countries, or among the several states of this Union, except in so far as the same may be permitted under the provisions of the constitution of the United States and the acts of congress."

and Section 614-102, reading as follows:

"Each section of this act, and every part thereof, is hereby declared to be independent sections and parts of sections, and the holding of any section or part thereof to be void or ineffective for any cause shall not affect any other section or part thereof."

Affiants further say that since the constitution and the laws of the United States prohibit the Public Utilities Commission of Ohio from directly burdening or preventing interstate hauling by motor vehicle, yet, in their opinion, the remaining sections of the motor transportation law are applicable to interstate hauling within Ohio as well as intra [fols. 28 & 28a] state hauling to-wit, the filing of insurance papers, the payment of the tax prescribed by the law and

complying with other police regulations and orders of the Commission the same as intrastate haulers.

Affiants further say that they, acting as the Public Utilities Commission of Ohio, have never attempted to apply to the motor transportation companies any uniform system of accounting or any other section of the public utilities law which would be inapplicable or impracticable if so applied.

Affiants further say that the plaintiffs have been advised through their attorneys that upon application to this Commission a Certificate to operate in Ohio an interstate business will be promptly granted.

Further affiants sayeth not.

Charles C. Marshall, Geo. T. Poor, F. B. Maullar.
(Seal.)

Before me, a Notary Public in and for the County of Franklin, State of Ohio, personally appeared Charles C. Marshall, George T. Poor, and Frank B. Maullar, who being first duly sworn say that the facts above stated are true.

John W. Bricker, Notary Public, Franklin County, Ohio.

[fol. 29] In United States District Court

[Title omitted]

Notice of Hearing and Marshal's Return—Filed September 21, 1925

Pursuant to Section 266 of the Revised Statutes of the United States, you will please take notice that the application for an interlocutory injunction in the above case will be heard by the District Court, composed of three judges as provided in the aforesaid section of the Revised Statutes, on Tuesday, at 9:30 A. M. September 15th, 1925 at the United States District Court in the city of Columbus, Franklin County, Ohio.

Bettinger, Schmitt & Kreis, Robt. P. Goldman, Complainants' Attorneys.

U. S. Marshal's Return

Received this writ at Columbus, Ohio, on September 8th, 1925, and served the within named as follows:

Hon. A. V. Donahey (served by order of Atty. for Plaintiff) by serving his secretary, J. A. Meckstroth, personally on Sept. 9, 1925, at Columbus, O.

Hon. C. C. Crabbe, Atty. Genl. of Ohio (served by order of Atty. for Plaintiff) by serving him personally on Sept. 9, 1925, at Columbus, O.

George T. Poor, Frank B. Maullar by leaving true copies of writ with C. C. Marshall, Member of Industrial Commission of Ohio, Sept. 9, 1925, at Columbus, Ohio.

C. C. Marshal served personally at Columbus, Ohio, Sept. 9, 1925.

Stanley Borthwick, U. S. Marshal, S. D. O., by F. B. Lampman, Deputy, by A. B. Brady, Deputy.

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[fol. 30] In United States District Court

[Title omitted]

Before Donahue, Circuit Judge, and Westenhaver and Hough, District Judges

Opinion—Filed October 19, 1925

Per Curiam:

This suit was brought to enjoin the defendants from enforcing against plaintiffs the provisions of the Ohio Motor Transportation Act of 1923, as amended in 1925, being Sections 614-84 to 614-102, General Code of Ohio. It was heard before three judges on an application for a preliminary injunction under Act of October 22, 1913 (U. S. Comp. Stat. 1916, Sec. 208). The defendants having filed an answer prior to this hearing, it was stipulated that the cause should be submitted for final decree upon the merits.

The plaintiffs are a partnership, having their residence and principal place of business at Aurora, Indiana. It is admitted in their bill that they are common carriers of property for hire and otherwise within the definition of a motor transportation company as made by the statutes above referred to. The contention is that because as such motor transportation company they are engaged exclusively in interstate commerce, they are not in any wise subject to the provisions of that law, and that defendants may not enforce any of its provisions against them. It is also admitted that they are operating motor vehicles between fixed termini, i. e., between Aurora, Indiana, and Cincinnati, Ohio. It is asserted, without dispute, that they make regular and irregular trips, but do not accept for transporta-
[fol. 31] tion or deliver any property so received except between these fixed termini. In other words, they are not engaged in any intrastate business.

Plaintiffs have made no application to the Public Utilities Commission for a certificate of convenience or public necessity. Defendants' answers and affidavits show without controversy that the Public Utilities Commission is willing and has offered to issue that certificate on condition only that plaintiffs furnish insurance policies required by Sec. 614-99, pay the taxes on each vehicle, as provided by Sec. 614-94, and otherwise observe and comply with the police regulations and orders of the Commission the same as is required of intrastate carriers. Plaintiffs in their bill make no complaint of any specific police regulations, whether prescribed by the Motor Transportation Act or by order of the Commission; nor do they complain of any burdensome orders or regulations established or applied to them. They do not even complain of the requirement of the law for keeping a system of uniform accounting. The answering affidavits of defendants show that no effort has been made to apply this provision of the law to the plaintiffs or other transportation companies engaged in interstate transportation. Hence the controversy resolves itself to the inquiry whether because defendants intend to enforce the requirement for payment of taxes and the giving of liability and cargo insurance, the plaintiffs are exonerated from all obligation to apply for and take a certificate of necessity and public convenience and observe the provisions of the law applicable to the plaintiffs. As we

understand their contention, it is that they are so exonerated solely because they do no intrastate business.

Upon plaintiffs' admission that they are common carriers for hire between fixed termini and otherwise within the [fol. 32] definition of the Motor Transportation Act, it is plain that they are obliged to comply with all the provisions of this law not unconstitutional, as applied to them. If defendants have been and are willing to grant the certificate and are not seeking to enforce any system of uniform accounting against the plaintiffs, and if there are no specific police regulations in the law or orders of the Commission complained of, then plaintiffs are without equity, except in so far as the conditions annexed to defendants' offer may be unconstitutional. In Red Ball Transit Co. v. Marshall, et al., #382, this day decided, we have held that the tax imposed is not invalid as applied to a motor transportation company engaged in interstate commerce. It is also therein held on authority of Liberty Highway v. Michigan Public Utilities Com'n, 294 Fed. 703, and Michigan Public Utilities Com'n v. Duke, 266 U. S. 570, that the liability and cargo insurance requirements are unreasonable and invalid. See our opinion for further discussion. It must be understood that this holding is limited to the specific facts before the court, in our opinion and in the several cases cited, and is not to be taken as holding invalid liability and freight insurance in different situations, such, for instance, as were approved In re opinion of Justices, Supreme Court Massachusetts, April 17, 1925, 147 N. E. 681.

The final order of the court in the Liberty Highway Co. case was that until the party complaining had offered to comply with the provisions of the law sustained by the court, it was not entitled to an injunction, even as against the provisions held to be invalid. In the present case, no application having been filed for a certificate of convenience and public necessity, and no offer made to comply with any of the provisions of the law, this court cannot now assume that defendants should refuse such a certificate [fol. 33] with requirements limited in accordance with the views expressed herein and in opinion in the Red Ball Transit Co. case.

Plaintiffs are therefore without equity. Their bill will be dismissed and injunction denied. Costs willl be taxed against plaintiffs.

Maurice H. Donahue, Circuit Judge. D. C. Westenhaver, Benson W. Hough, District Judges.

October, 1925.

[fol. 34] In United States District Court

[Title omitted]

Judgment—Filed December 8, 1925

This cause came on to be heard upon the pleadings, evidence and arguments of counsel and was submitted to the Court, upon consideration whereof, the Court finds that the complainants are not entitled to the relief prayed for, for the reason that the said complainants have filed no application with defendants for a certificate of public convenience and necessity and have made no offer to comply with any of the provisions of the Ohio Motor Transportation Law, viz, Section 614-84 to 614-102 inclusive, of the General Code of Ohio.

It is, therefore, ordered, adjudged, and decreed that said Bill of Complaint be and the same is hereby dismissed and the injunction prayed for therein denied, and that the defendants recover of the plaintiffs their costs herein expended.

It is further ordered, adjudged, and decreed that the preliminary restraining order heretofore allowed in this case be, and the same is hereby dissolved.

To all of which complainants by their counsel except.

Maurice H. Donahue, Circuit Judge, Benson W. Hough, Judge.

F. R. Bettinger, Schmitt & Kreis, Paxton, Warrington & Seasongood Attys. for Complainant.

[fol. 35] In United States District Court

[Title omitted]

Petition for Appeal.—Filed December 8, 1925

Benjamin H. Clark and Charles Riggs, a partnership doing business under the firm name of Clark and Riggs, conceiving themselves aggrieved by the decree rendered and entered in the above entitled cause on December 8th, 1925, dismissing their bill of complaint and denying the injunction prayed for therein, do hereby appeal from said decree to the Supreme Court of the United States for the reasons set forth in the Assignment of Errors filed herewith, and pray that their appeal may be allowed, that citation be issued and that a transcript of the record, proceedings and papers upon which said decree was made, duly authenticated, be sent to the Supreme Court of the United States, and petitioner shows that it is entitled to this appeal under Section 266 of the Act of Congress of March 3, 1911, as amended, known as the Judicial Code.

Your petitioner further prays that a proper order be made relating to the security to be required of it.

Bettinger, Schmitt & Kreis, Paxton, Warrington & Seasongood, Murray Seasongood, Solicitors for Benjamin H. Clark and Charles Riggs.

[fol. 36] In United States District Court

Order Allowing Appeal.—Filed December 8, 1925

It is hereby ordered that an appeal to the Supreme Court of the United States from the decree heretofore rendered and entered herein, be, and the same is hereby allowed, and that a certified transcript of the record, proceedings and papers upon which said decree was made be forthwith transmitted to the Supreme Court of the United States. It is further ordered that the penalty of the appeal bond be fixed at $200.00.

And it is further ordered that the citation on appeal to be issued herein be served on George T. Poor, C. C. Mar-

shall and Frank B. Maullar, constituting the Public Utilities Commission of the State of Ohio, or on their attorneys.

Dated at Columbus, Ohio, this 8th day of December, 1925.

Benson W. Hough, Judge of the District Court of the United States, Southern District of Ohio, Eastern Division.

[fol. 37] IN UNITED STATES DISTRICT COURT

[Title omitted]

ASSIGNMENTS OF ERROR—Filed December 8, 1925

In connection with their petition for an appeal from the decree entered on the 8th day of December, 1925, Benjamin H. Clark and Charles Riggs, a partnership doing business under the firm name of Clark and Riggs, file the following assignment of errors:

1. The court erred in holding that the defendants, constituting the Public Utilities Commission of Ohio, have any jurisdiction over complainants, who are admittedly engaged solely in interstate commerce.

2. The court erred in holding that the defendants, constituting the Public Utilities Commission of Ohio, can require complainants to apply for and obtain a certificate of public convenience and necessity pursuant to the Ohio Motor Transportation Act (Secs. 614-84 to 614-102, inclusive, of the General Code of Ohio) as a condition of their right to operate automobile trucks, engaged and operating entirely in interstate commerce in the State of Ohio.

3. The court erred in holding that the tax imposed by the Ohio Motor Transportation Act (Sec. 614-94 of the General Code of Ohio) is valid as applied to complainants, who are admittedly engaged solely in interstate commerce.

[fol. 38] 4. The court erred in holding that the tax imposed by the Ohio Motor Transportation Act (Sec. 614-94 of

the General Code of Ohio) is valid as applied to complainants, who are admittedly common carriers engaged solely in interstate commerce, when said tax is not attempted to be applied to other persons using the roads of Ohio in the same manner and to the same extent as complainants, though not common carriers.

5. The court erred in dismissing complainants' bill of complaint.

6. The court erred in holding that complainants are without equity on the ground that complainants had not theretofore applied to the defendants, constituting the Public Utilities Commission of Ohio, for a certificate of public convenience and necessity.

7. The court erred in denying complainants' application for an injunction as prayed for in their bill of complaint.

8. The court erred in dissolving the temporary or preliminary restraining order theretofore granted and allowed.

9. The court erred in finding that the complainants were not entitled to the relief prayed for in their bill of complaint, for the reason, as found by the court, that the said complainants had filed no application with the defendants for a certificate of public convenience and necessity and had made no offer to comply with any of the provisions of the Ohio Motor Transportation Law, viz., Secs. 614-84 to 614-102, inclusive, of the General Code of Ohio.

Bettinger, Schmitt & Kreis, Paxton, Warrington & Seasongood, Murray Seasongood, Solicitors for Benjamin H. Clark and Charles Riggs.

[fols. 39 & 40] Bond on appeal for $200.00, approved and filed December 9, 1925, omitted in printing.

[fol. 41] IN UNITED STATES DISTRICT COURT

[Title omitted]

BILL OF EXCEPTIONS AND ORDER SETTLING SAME—Filed December 8, 1925

Be it remembered that on the trial of this case in the above entitled court at the June, 1925, term thereof, before the Honorable Maurice H. Donahue, Circuit Judge, and D. C. Westenhaver and Benson W. Hough, District Judges, sitting at Columbus, Ohio, and Robert P. Goldman, of Messrs. Paxton, Warrington & Seasongood, and Walter Schmitt, of Messrs. Bettinger, Schmitt & Kreis, both of Cincinnati, Ohio, being present on behalf of complainants, and John W. Bricker, of Columbus, Ohio, being present on behalf of defendants, complainants, to maintain the issues on their behalf to be maintained, offered and introduced in evidence the affidavit of Benjamin H. Clark, filed September 17, 1925, and the affidavit of Samuel Herndon, filed September 17, 1925, copies of which are hereto attached and made a part hereof, marked respectively Exhibits A and B. It was agreed by and between solicitors [fol. 42] for complainants and defendants that said affidavits might be offered and received in evidence on behalf of complainants in lieu of either oral testimony or depositions.

The complainants also offered and introduced in evidence the rules and regulations governing the transportation of persons and property for compensation over any public highway by motor propelled vehicles adopted by the Public Utilities Commission of Ohio and issued as an administrative order effective August 5, 1925, copy of which is hereto attached and made a part hereof, marked C.

The defendants, to maintain the issues on their behalf to be maintained, offered and introduced in evidence the affidavit of C. C. Marshall, George T. Poor and Frank B. Maullar, a copy of which is hereto attached and made a part hereof, marked Exhibit D. It was agreed by and between solicitors for plaintiff and defendants that said affidavit might be offered and received in evidence on behalf of defendants in lieu of their oral testimony or depositions.

And the foregoing is all the evidence given or offered by either of said parties upon the trial of this case.

Counsel for all parties hereby consent and approve the foregoing bill of exceptions and request the court to approve the same.

Bettinger, Schmitt & Kreis, Paxton, Warrington & Seasongood, Murray Seasongood, Solicitors for Benjamin H. Clark and Charles Riggs. C. C. Crabbe, Atty. Gen.; John W. Bricker, Solicitors for George T. Poor, C. C. Marshall, and Frank B. Maullar, Constituting the Public Utilities Commission of Ohio.

Signed, allowed, and approved this 8th day of December, 1925.

Benson W. Hough, Judge of the United States District Court, Southern District of Ohio, Eastern Division.

[fols. 43-45] Exhibit "A" to Bill of Exceptions omitted; printed side page 19 ante.

[fols. 46-50] Exhibit "B" to bill of exceptions omitted; printed side page 22 ante.

[fols. 51-51-2] EXHIBIT C TO BILL OF EXCEPTIONS

THE PUBLIC UTILITIES COMMISSION OF OHIO

Rules and Regulations Governing the Transportation of Persons and Property for Compensation Over any Public Highway by Motor-propelled Vehicles, as Provided in House Bill No. 474, Session Laws 1923; House Bill No. 90, Session Laws 1925, and Senate Bill No. 1, Session Laws 1925.

Adopted by the Public Utilities Commission of Ohio and Issued as an Administrative Order

Effective August 5, 1925

C. C. Marshall, Chairman; F. B. Maullar, Commissioner; Geo. T. Poor, Commissioner; J. B. Dugan, Acting Secretary

Columbus, Ohio

[fols. 51-3 & 51-4] THE PUBLIC UTILITIES COMMISSION OF OHIO

At a regular session of the Public Utilities Commission of Ohio, held at Columbus, Ohio, upon the 27th day of June, A. D. 1925.

Present: Charles C. Marshall, Chairman; George T. Poor, Frank B. Maullar, Commissioners.

Administrative Order No. 93

In the matter of a Code of Rules and Regulations governing the transportation of persons and property, for compensation, over public highway in the State of Ohio, as provided in House Bill No. 474, Session Laws 1923, House Bill No. 90 and Senate Bill No. 1, Session Laws, 1925.

Under the provisions of House Bill 474, Session Laws 1923, House Bill No. 90 and Senate Bill No. 1, Session Laws 1925, and in the exercise of the general powers therein conferred, it is hereby

Ordered, That the Rules and Regulations annexed to this order, entitled "Rules and regulations governing the transportation of persons and property for compensation over

any public highway by motor-propelled vehicles," be and the same are hereby adopted, effective August 5, 1925.

Previous Rules and Regulations adopted by our Administrative Order No. 81, dated July 28, 1923, are hereby cancelled, effective August 5, 1925.

[fol. 51-5] Rules and Regulations Governing the Transportation of Persons and Property for Compensation Over Any Public Highway by Motor-propelled Vehicles

Explanatory

1

Sections 614-2, 614-84, 614-85, 614-86, 614-87, 614-88, 614-89, 614-90, 614-91, 614-92, 614-93, 614-94, 614-95, 614-96, 614-97, 614-98, 614-99, 614-100, 614-101, and 614-102, of the General Code of Ohio, as printed in the Appendix hereto, will hereinafter be known and referred to as the "Act."

Definitions

2

(a) Unless the language or context indicates that a different meaning is intended, the following words, terms, and phrases shall, for the purpose of this order, be given the meanings hereinafter subjoined to them:

(b) The word "State" means the State of Ohio.

(c) The word "Commission" means the Public Utilities Commission of Ohio.

(d) The word "Certificate" means the certificate of public convenience and necessity authorized to be issued under the provisions of the Act.

(e) The term "public highway," when used herein, means any public street, road or highway in this State, whether within or without the corporate limits of a municipality.

(f) The term "motor vehicle," when used herein, means any automobile, automobile truck, motor bus, or any other self-propelled vehicle not operated or driven upon fixed rails or track.

(g) Except as provided in Section 614-84 of the Act, the term "motor transportation company" means every person, or persons, firm or firms, co-partnership, or voluntary association, joint stock association, company or corporations, wherever organized or incorporated, their lesses, trustees, receivers or trustees, appointed by any court whatsoever, when engaged in the business of carrying and transporting persons or property or both, in motor propelled vehicles of any kind whatsoever, for hire, over any public street, road or highway in this state.

[fol. 51-6] (h) The term "corporation," when used herein, means a corporation, a company, an association, or joint stock association.

(i) The term "person," when used herein, means an individual, a firm or co-partnership.

(j) The words "fixed termini," when used herein, shall be understood to refer to the points between which any motor transportation company usually or ordinarily operates or manges any motor vehicle, and the words "regular route" shall be understood to refer to that portion of the public highway over which any motor transportation company usually or ordinarily operates or manages any motor vehicle. Whether or not any motor vehicle is operated by such transportation company, "between fixed termini or over a regular route," shall be a question of fact and the finding of the Commission thereon shall be a final order which may be reviewed as provided in section 614-89 of the Act.

Certificates, Affidavits, and Applications

3

No motor transportation company shall begin to operate any motor vehicle for the transportation of persons or property, or both, for compensation, between fixed termini or over a regular or irregular route in this state, without first obtaining from the Commission a certificate declaring that public convenience and necessity require such operation.

4

Motor transportation companies desiring to operate in this state, shall file with the commission on forms to be furnished by the Commission, application for a certificate so to do. Such application shall be sworn to before a Notary Public or an officer authorized by law to take acknowledgments to deeds.

5

Applications for certificate must be filed in duplicate and shall contain or be accompanied by:

(a) A statement showing the principal office or place of business and residence of such motor transportation company.

(b) A statement giving full information concerning the physical property used or to be used by the applicant.

(c) Complete statement of the route over which the applicant desires to operate, showing the number of miles of said route in each municipality and county and the names of the streets and highways over which the route runs and [fol. 51-7] extends, if the proposed operation is between fixed termini or over a regular route.

(d) The proposed time schedule or schedules or time cards of the applicant, if desiring to operate between fixed termini or over a regular route.

(e) The proposed tariff schedule or schedules showing the passenger or freight rates to be charged between the several points, if operating between fixed termini or over a regular route.

(f) The proposed tariff schedule or schedules showing the passenger or freight rates to be charged, if not operating between fixed termini or over a regular route.

(g) Statement showing the stand or location from which, and the territory within which applicant desires to operate, when the passenger or freight service to be rendered is not between fixed termini or over a regular route.

(h) A printed, blue print, or suitable sketch map, showing the highways and public places upon and over which

applicant desires to operate, and such map shall show the miles of route or fraction thereof in each municipality or county.

(i) Copy of partnership agreement if more than one person interested and not incorporated.

(j) Statement showing names and addresses of all persons, firms, or corporations, now furnishing similar service by means of motor propelled vehicles, steam or electric railways, or boat lines, between any of the points or along any portion of the route proposed to be served.

(k) A complete statement showing the conditions existing which are relied upon by the applicant as justification for the granting of a certificate.

(l) Any other exhibits that might assist the Commission in determining the reasonableness of the application.

(All statements, documents, or exhibits required under this rule shall be filed in duplicate.)

6

(a) Applicant for a certificate shall give notice of the filing of such application by publication made once a week for three weeks immediately prior to the day set for hearing, in a newspaper of general circulation published at the county seat of each county in or through which the applicant proposes to operate, or in one newspaper published in and of general circulation throughout the territory in or through which the applicant proposes to operate. Such published notice shall state the fact that such application has been made, the route proposed to be operated, the number of motor vehicles to be used, the number of trips to be made daily, and the name and address of the applicant.

[fol. 51-8] (b) The Commission has approved the following form of notice by publication, which form should be substantially followed:

Notice of Application for Certificate of Public Convenience and Necessity to Operate a Motor Transportation Company

Public notice is hereby given that (Name of person or corporation:) ——— has filed with the Public Utilities Commission of Ohio an application for a certificate of public convenience and necessity to operate a motor transportation company for the transportation of (Persons or property or both:) —— over the following route, to-wit: ——.

Number of trips to be made daily (If trips are not to be made daily so state): ——.

Number of motor vehicles to be used: ——.

All parties interested may obtain information as to time and place of hearing upon said application by addressing the Public Utilities Commission of Ohio at Columbus, Ohio.

(Name and address of applicant:) —— ——.

(c) Since the notice of application for a certificate must be published for three consecutive weeks and the Commission should have in its files proof of such publication before a certificate is granted, publication thereof should be commenced promptly, three weeks prior to the date set for the hearing, and immediately upon completion of publication, proof thereof in substantially the following form shall be filed with the Commission:

Certificate of Publication

State of Ohio,
—— County, ss:

On this — day of ——, A. D. 192, personally appeared before the undersigned, a — within and for said county and state, (Name of publisher:) ———, who being duly sworn, states on oath that he is publisher of ——, news- [fol. 51 9] paper at ——, county of ——, State of Ohio, and that same if of general circulation in said county ("through

"The law requires publication of notice in a newspaper published at the county seat of each county in which the applicant desires to operate, or, in one newspaper published in, and of general circulation throughout the territory in which applicant desires to operate. If publication is made in each county seat, the words "throughout the territory" appearing in the above form should be stricken out, and the terms of the alternative manner of publication is used.

out the territory) in which —— —— proposes to operate as a motor transportation company, and that the notice, a true copy of which is hereto annexed, was published in said newspaper three consecutive weeks in its issues of ——, A. D. 192-.

—— ——.

Subscribed and sworn to before me this — day of ——, A. D. 192-. —— ——.

7

Certificates will be accompanied by official receipt or receipts of the State Treasurer for the current fiscal year or that part of the current fiscal year in which such certificate is issued; which official receipt is hereby made a part of and must be attached to the certificate.

8

Official receipts must be renewed annually thereafter, on or between January first and January fifteenth of each calendar year, by payment of the proper tax as provided for in section 614-94 of the Act.

9

Such official receipt shall recite the number of the certificate which it covers; shall describe the motor vehicle or vehicles authorized to be operated thereunder, the amount of the tax paid and the date of the expiration of such receipt.

10

A certificate, to be valid, must have attached official receipt or receipts for the current fiscal year above provided [fol. 51-10] for, and must be kept on file subject to inspection by the Commission or its authorized representatives, at the main office of the owner of the line or route covered.

11

In case a motor vehicle carrying passengers becomes disabled while enroute and is unable to proceed, any passenger or passengers on such disabled vehicle shall have the

privilege of proceeding upon any other passenger carrying vehicle operating under a certificate from the Commission, on the same route or portion of route, and it shall be the duty of the driver of any such passenger carrying vehicle to stop on signal and receive such passengers to the extent of the unoccupied seating capacity of such vehicle and carry the same to destination or as near such destination as the route of the passing vehicle will permit; the motor transportation company whose passengers are thus relieved shall pay to the second company a share of the transportation fee proportionate to the distance such passengers are transported by the relieving carrier.

12

In case any motor vehicle is substituted or replaced by another, such fact must be reported promptly to the Commission, in writing; such report must describe fully the vehicle or vehicles to be used, the vehicle or vehicles replaced, and must state fully the reasons therefor.

13

In cases of emergency or unusual demands for transportation, other motor vehicles may be used by a motor transportation company under its certificate for a limited period, provided, that all such cases must be reported to the Commission, in writing, within three days; such report to be accompanied by the necessary fee or tax on such vehicle for the balance of the current fiscal year, as set out in section 614-94 of the Act, or by the fee or tax for each day or portion of a day such vehicle is used, as provided in rule 22 hereof.

14

Whenever by reason of accident, disablement or breakdown of any motor vehicle to which these rules are applicable, operation thereof pursuant to the schedule filed with the Commission and in compliance with the conditions prescribed by these rules is impossible, it shall be the duty of the motor transportation company lawfully in possession thereof to make arrangements for making available a substitute motor vehicle to take the place thereof, in order that

the published time schedule may be maintained. Such substitute motor vehicle shall be fully subject in all respects to the provisions of these rules insofar as the same are [fol. 51-11] reasonably applicable. If the capacity of the substitute car be greater than that of the car regularly used, for which a certificate has been issued under the provisions of the Act and these rules, a greater number of passengers or a greater weight in freight shall not be carried than that authorized in such certificate for such regularly used car.

15

All motor transportation companies shall keep on file in their main office, subject to inspection by the Commission or its authorized representatives, a daily record of vehicles used, showing:

(a) Complete description of each vehicle used.

(b) Number of trips and between what points each of said vehicles was operated.

16

Each motor transportation company, operating over an irregular route (not between fixed termini) shall render to the Commission, within five days after the end of each month, a sworn statement covering operations for the preceding month; such sworn statement shall be furnished in duplicate and shall show:

(a) Number of trips made and between what points.

(b) Total mileage operated over, within each municipal corporation.

(c) Total mileage operated over, within each county, outside the limits of any municipal corporation.

17

Applications for issuance of a duplicate certificate or official receipt must be accompanied by affidavit of the owner thereof, setting forth that the original certificate or official receipt has been lost or destroyed.

18

The grantee or grantees of any certificate shall notify the Commission promptly of any change of address occurring after the issuance of a certificate.

Special Taxes

19

Every motor transportation company now operating or which shall hereafter operate in this state shall pay at the time of the issuance of certificate, and annually thereafter on or between January 1st and January 15th of each calendar year, special tax for each motor vehicle operated, under the conditions and in amounts as set forth in Section 614-94 of the Act.

[fol. 51-12]

20

All taxes levied upon the issuance of a certificate to any motor transportation company shall be reckoned as from the beginning of the quarter in which such certificate is issued.

21

For each motor vehicle used for transporting both persons and property simultaneously the tax shall be computed on the basis of either tonnage or passenger capacity and the basis which yields the greater revenue shall apply.

22

The tax on motor vehicles, operated for limited periods (as in cases of emergency or unusual temporary demands for transportation as provided in Rule 13) shall be One Dollar ($1.00) for each day or portion of day such vehicle is used.

23

A trailer used by a motor transportation company hereunder shall be taxed at a rate equal to twenty per cent. of that levied upon the vehicle by which it is drawn.

Liability and Property Damage Insurance of Surety Bond

24

Within five (5) days after the date of the order granting an application for a certificate, and before such certificate shall issue, the applicant shall file with the Commission, liability and property damage insurance policy which shall have attached thereto endorsement as set out in Rule 25, or surety bond, the form of which is set out in Rule 26, covering each motor vehicle used or to be used by such applicant, in the sum of Six Thousand Dollars ($6,000) for any recovery for personal injury by one person and not less than Twelve Thousand Dollars ($12,000) for all persons receiving personal injury by reason of one act of negligence, on all motor vehicles used in the transportation of property and on passenger carrying motor vehicles of seven (7) passenger capacity or less; not less than Eighteen Thousand Dollars ($18,000) on motor vehicle of eight (8) to twelve (12) passenger capacity, inclusive; not less than Twenty-four Thousand Dollars ($24,000) on motor vehicles of thirteen (13) to eighteen (18) passenger capacity, inclusive; not less than Thirty Thousand Dollars ($30,000) on motor vehicles of nineteen (19) to twenty-four (24) passenger capacity, inclusive; not less than Thirty-six Thousand Dollars ($36,000) on motor vehicles of over twenty-four (24) passenger capacity and in addition thereto, the sum of One Thou- [fol. 51-13] sand Dollars ($1,000) for damage to property of any person other than the assured. Failure to file and keep such insurance policy or surety bond in full force and effect shall be cause for revocation of a certificate.

25

One or more of the following forms of endorsement must be attached to all insurance policies submitted by the motor transportation companies:

(a) Endorsement Covering Persons, Property, and Cargo

The policy to which this endorsement is attached is written in pursuance of and is to be construed in accordance with Section 614-2 and Sections 614-84 to 614-102, inclusive, G. C. of Ohio, and the Rules and Regulations to The Pub-

lic Utilities Commission of Ohio adopted thereunder, and in force at the date hereof. The purpose of this endorsement is to make certain during the term of said policy and any renewal thereof the liability of the Company to any person injured in person or property by the negligence of the insured as hereinafter set forth.

In consideration of the premium stated in the policy to which this endorsement is attached, the Company agrees to pay the judgment creditor any final judgment rendered against the insured upon a liability hereunder within the limits set forth in the schedule shown hereon and further agrees that upon its failure to pay any such final judgment such judgment creditor may maintain an action against the Company in the proper court to compel such payment.

And the said Company for the consideration aforesaid, by the policy of insurance to which this endorsement is attached, hereby insures and agrees to indemnify the insured during the term of said policy or any renewal thereof, against loss sustained by reason of the death of, or injury to persons, and for loss or damage to, property (in excess of $50.00), except property of insured, resulting from the negligence of the insured, while said property is loaded for shipment or in transit or in the custody and control of the insured and while operating as a common carrier the motor vehicle or vehicles enumerated in the schedule of statements or any substituted or emergency vehicle, under and in accordance with a certificate of public convenience and necessity issued by The Public Utilities Commission of Ohio, notwithstanding, and in addition to, liability from risks of a different character, if any, provided for in said policy.

No condition, provision, stipulation, or limitation contained in the policy or any other endorsement thereon, nor the violation of any of the same by the insured shall affect in any way the right of any person injured in person or property by the negligence of the insured or relieve the [fol. 51-14] Company from the liability provided for in this endorsement, or from the payment to such person of any such judgment, to the extent and in the amounts set forth in the schedule shown hereon; but the conditions, provisions, stipulations and limitations contained in the policy and, or any other endorsement thereon shall remain in full force and be binding as between the insured and the Company.

The policy to which this endorsement is attached shall not expire nor shall cancellation take effect until after ten (10) days' notice in writing, by the Company shall have first been given to The Public Utilities Commission of Ohio, at its office in Columbus, Ohio, said ten (10) days' notice to commence to run from the date notice is actually received at the office of the Commission.

Attached to and forming a part of policy No. — issued by the —— Insurance Company to —— ——.

Schedule

On each motor vehicle used for the transportation of property not less than

$6,000 for any recovery for personal injury by one person;

$12,000 for all persons receiving personal injury by reason of one act of negligence; and not less than

$1,000 for damage to property of any person other than the assured.

On each motor vehicle used for the transportation of persons, having a passenger capacity of 7 passengers or less, not less than

$6,000 for any recovery for personal injury by one person;

$12,000 for all persons receiving personal injury by reason of one act of negligence; and not less than

$1,000 for damage to property of any person other than the assured.

On each motor vehicles used for the transportation of persons, having a passenger capacity of 8 to 12 passengers, inclusive, not less than

$6,000 for any recovery for personal injury by one person;

$18,000 for all persons receiving personal injury by reason of one act of negligence; and not less than

$1,000 for damage to property of any person other than the assured.

On each motor vehicle used for the transportation of persons, having a passenger capacity of 13 to 18 passengers, inclusive, not less than

$5,000 for any recovery for personal injury by one person;

$24,000 for all persons receiving personal injury by reason of one act of negligence; and not less than

$1,000 for damage to property of any person other than the assured.

On each motor vehicle used for the transportation of persons, having a passenger capacity of 19 to 24 passengers, inclusive, not less than

$5,000 for any recovery for personal injury by one person;

[fol. 51-15] $30,000 for all persons receiving personal injury by reason of one act of negligence; and not less than

$1,000 for damage to property of any person other than the assured.

On each motor vehicle used for the transportation of persons, having a passenger capacity of more than 24 passengers, not less than

$5,000 for any recovery for personal injury by one person;

$36,000 for all persons receiving personal injury by reason of one act of negligence; and not less than

$1,000 for damage to property of any person other than the assured.

(b) Endorsement Covering Persons and Property Except Cargo

The policy to which this endorsement is attached is written in pursuance of and is to be construed in accordance with Section 614.2 and Sections 614.84 to 614.102 inclusive, G. C. of Ohio, and the Rules and Regulations of The Public Utilities Commission of Ohio adopted thereunder, and in force at the date hereof. The purpose of this endorsement is to make certain during the term of said policy and any renewal thereof the liability of the Company to any person injured in person or property by the negligence of the insured as hereinafter set forth.

In consideration of the premium stated in the policy to which this endorsement is attached, the Company agrees to pay to the judgment creditor any final judgment rendered against the insured upon a liability hereunder within the

limits set forth in the schedule shown hereon and further agrees that upon its failure to pay any such final judgment such judgment creditor may maintain an action against the Company in the proper court to compel such payment.

And the said Company for the consideration aforesaid, by the policy of insurance to which this endorsement is attached, hereby insures and agrees to indemnify the insured during the term of said policy or any renewal thereof, against loss sustained by reason of the death of, or injury to persons, and for damage to property (in excess of $50.00) except property of the insured, while said property is loaded for shipment or in transit or in the custody and control of the insured and while operating as a common carrier the motor vehicle or vehicles enumerated in the schedule of statements or any substituted or emergency vehicles, under and in accordance with a certificate of public convenience and necessity issued by The Public Utilities Commission of Ohio, notwithstanding, and in addition to, liability from risks of a different character, if any, provided for in said policy.

No condition, provision, stipulation, or limitation contained in the policy or any other endorsement thereon, nor the violation of any of the same by the insured shall affect in any way the right of any person injured in person or [fol. 51 16] property by the negligence of the insured or relieve the Company from the liability provided for in this endorsement, or from the payment to such person of any such judgment, to the extent and in the amounts set forth in the schedule shown hereon; but the conditions, provisions, stipulations and limitations contained in the policy and, or any other endorsement thereon shall remain in full force and be binding as between the insured and the Company.

The policy to which this endorsement is attached shall not expire nor shall cancelation take effect until after ten (10) days' notice in writing, by the Company, shall have first been given to The Public Utilities Commission of Ohio, at its office in Columbus, Ohio, said ten (10) days' notice to commence to run from the date notice is actually received at the office of the Commission.

Attached to and forming a part of policy No — issued by the —— Insurance Company to —— ——.

Schedule

On each motor vehicle used for the transportation of property not less than

$5,000 for any recovery for personal injury by one person;

$12,000 for all persons receiving personal injury by reason of one act of negligence; and not less than

$1,000 for damage to property of any person other than the assured.

On each motor vehicle used for the transportation of persons, having a passenger capacity of 7 passengers or less, not less than $6,000 for any recovery for personal injury by one person;

$12,000 for all persons receiving personal injury by reason of one act of negligence, and not less than

$1,000 for damage to property of any person other than the assured.

On each motor vehicle used for the transportation of persons, having a passenger capacity of 8 to 12 passengers, inclusive, not less than

$6,000 for any recovery for personal injury by one person;

$18,000 for all persons receiving personal injury by reason of one act of negligence, and not less than

$1,000 for damage to property of any person other than the assured.

On each motor vehicle used for the transportation of persons, having a passenger capacity of 13 to 18 passengers, inclusive, not less than

$6,000 for any recovery for personal injury by one person;

$24,000 for all persons receiving personal injury by reason of one act of negligence, and not less than

$1,000 for damages to property of any person other than the assured.

[fol. 51-17] On each motor vehicle used for the transportation of persons, having a passenger capacity of 19 to 24 passengers, inclusive, not less than $6,000 for any recovery for personal injury by one person;

$30,000 for all persons receiving personal injury by reason of one act of negligence; and not less than

$1,000 for damage to property of any person other than the assured.

On each motor vehicle used for the transportation of persons, having a passenger capacity of more than 24 passengers, not less than

$6,000 for any recovery for personal injury by one person;

$36,000 for all persons receiving personal injury by reason of one act of negligence; and not less than

$1,000 for damage to property of any person other than the assured.

26

Form of Surety Bond

Know all men by these presents:

That we, ————, of the City of ——, State of Ohio, as principal, and ——— ——, a corporation organized and existing under and by virtue of the laws of —— and authorized to transact business in the State of Ohio under the laws thereof, as surety are held and firmly bound unto the State of Ohio, in the just and full sum of lawful money of the United States of America, upon each and every vehicle operated by the principal herein in the amounts as set out in the schedule below, for the payment of which well and truly to be made do hereby bind ourselves, our heirs, executors, administrators, successors, and assigns, severally by these presents.

Signed, sealed and dated this — day of ——, 192 .

This bond is written in pursuance of and is to be construed in accordance with section 614-2 and sections 614-84 to 614-102, inclusive, of the General Code of Ohio, and the Rules and Regulations of the Public Utilities Commission of Ohio, adopted thereunder; is to be filed with the Public Utilities Commission of Ohio for the benefit of persons who sustain damage or injury from the operation of any and all motor vehicles operated by the motor transportation company (principal herein), under and by virtue of its certificate of public convenience and necessity granted by the Public Utilities Commission of Ohio, and the tariffs and time schedules filed thereunder.

Schedule

On each motor vehicle used for the transportation of property not less than

$6,000 for any recovery for personal injury by one person, and

$12,000 for all persons receiving personal injury by reason of one act of negligence, and not less than

$1,000 for damage to property of any person other than the assured.

[fols. 51-18] On each motor vehicle used for the transportation of persons, having a passenger capacity of 7 passengers or less, not less than

$6,000 for any recovery for personal injury by one person, and

$12,000 for all persons receiving personal injury by reason of one act of negligence; and not less than

$1,000 for damages to property of any person other than the assured.

On each motor vehicle used for the transportation of persons, having a passenger capacity of 8 to 12 passengers, inclusive, not less than

$6,000 for any recovery for personal injury by one person, and

$18,000 for all persons receiving personal injury by reason of one act of negligence; and not less than

$1,000 for damage to property of any person other than the assured.

On each motor vehicle used for the transportation of persons, having a passenger capacity of 13 to 18 passengers, inclusive, not less than

$6,000 for any recovery for personal injury by one person, and

$24,000 for all persons receiving personal injury by reason of one act of negligence; and not less than

$1,000 for damage to property of any person other than the assured.

On each motor vehicle used for the transportation of persons, having a passenger capacity of 19 to 24 passengers, inclusive, not less than

$6,000 for any recovery for personal injury by one person, and

$30,000 for all passengers receiving personal injury by reason of one act of negligence; and not less than

$1,000 for damage to property of any person other than the assured.

On each motor vehicle used for the transportation of persons, having a passenger capacity of more than 24 passengers, not less than

$6,000 for any recovery for personal injury by one person, and

$30,000 for all persons receiving personal injury by reason of one act of negligence, and not less than

$1,000 for damage to property of any person other than the assured.

Now, therefore, the condition of this obligation is such that if the said principal in accordance with section 614-2 and sections 614-84 to 614-102, inclusive, of the General Code of Ohio, and the Rules and Regulations of The Public Utilities Commission of Ohio adopted thereunder, shall pay all damages for personal injuries which may be sustained by any person or any damage to property of any person other than the assured, by reason of any act of negligence on the part of the said principal, its agents or employees in the operation of motor propelled vehicles in transporting persons, and, or, property for compensation, under its certificate of public convenience and necessity issued by the Public Utilities Commission of Ohio, and tariffs and time schedules filed thereunder, then this obligation to the void, otherwise to remain in full force and effect.

This bond may be canceled by the surety at any time by filing written notice with the Public Utilities Commission [fols. 51-19] of Ohio, stating when the cancellation shall be effective, but in no case, shall such cancellation notice be effective within ten (10) days after the receipt of such notice by The Public Utilities Commission of Ohio.

——— ———, Principal. ——— ———, Surety.

27

Motor vehicles listed with the commission and covered by insurance or surety bond as above provided shall be plainly marked by painting in a conspicuous place upon each side of the vehicle in letters not less than two inches in height and the line of which shall not be less than one-

quarter inch in width, the letters P. U. C. O., followed by the number of the certificate assigned, thus: P. U. C. O. No. 186.

Nothing in this rule shall be construed as prohibiting a motor transportation company from using other motor vehicles, in cases of emergency or unusual temporary demands for transportation, without so marking the same, providing that all such cases are promptly reported to the Commission in writing, as provided in Rule No. 13 hereof.

28

The marking provided for in Rule 27 above must be removed or entirely effaced by the owner of such vehicle before any sale, lease or transfer of ownership is made, and immediately upon the expiration of the insurance policy or surety bond, unless the same is renewed or a new policy of insurance or surety bond is filed with the Commission before such expiration.

29

All insurance policies or surety bonds filed with the Commission under section 614-99 of the General Code and the Rules and Regulations of the Commission, are to be so written that the same will continue in full force and effect unless and until canceled by ten (10) days' written notice served on The Public Utilities Commission of Ohio, the said ten (10) days' notice to commence to run from the date notice is actually received by the Commission.

[fols. 51-20] Endorsement Governing Cargo

The policy to which this endorsement is attached is written in pursuance of and is to be construed in accordance with Section 614-2 and Sections 614-84 to 614-102, inclusive, G. C. of Ohio, and the Rules and Regulations of The Public Utilities Commission of Ohio adopted thereunder, and in force at the date hereof. The purpose of this endorsement is to make certain during the term of said policy and any renewal thereof the liability of the Company to any person for the loss of, or damage to property.

In consideration of the premium stated in the policy to which this endorsement is attached, the Company agrees to pay to the judgment creditor any final judgment rendered

against the insured upon a liability hereunder within the limits set forth in the schedule shown hereon and further agrees that upon its failure to pay any such final judgment such judgment creditor may maintain an action against the Company in the proper court to compel such payment.

And the said Company for the consideration aforesaid, by the policy of insurance to which this endorsement is attached, hereby insures and agrees to indemnify the insured during the term of said policy or any renewal thereof, for loss of any property (except the insured's property) and for damage to property carried in or upon any freight carrying motor vehicle or trailer insured hereunder in excess of $50.00, while said property is loaded for shipment or in transit or in the custody and control of the insured while operating as common carrier the motor vehicle or vehicles enumerated in the schedule of statements or any substituted or emergency vehicle, under and in accordance with a certificate of public convenience and necessity issued by The Public Utilities Commission of Ohio, notwithstanding, and in addition to liability from risks of a different character, if any, provided for in said policy.

No condition, provision, stipulation, or limitation contained in the policy or any other endorsement thereon, nor the violation of any of the same by the insured shall affect in any way the right of any person injured in his property by the insured or relieve the Company from the liability provided for in this endorsement, or from the payment to such person of any such judgment, to the extent and in the amounts set forth in the schedule shown hereon; but the conditions, provisions, stipulations and limitations contained in the policy, and any other endorsements thereon shall remain in full force and be binding as between the insured and the company.

The policy to which this endorsement is attached shall not expire nor shall cancellation take effect until after ten [fols. 51-21] (10) days' notice in writing, by the Company, shall have first been given to The Public Utilities Commission of Ohio, at its office in Columbus, Ohio, said ten (10) days' notice to commence to run from the date notice is actually received at the office of the commission.

Attached to and forming a part of Policy No. —, issued by the —— Insurance Company to —— ——.

Schedule .

On each motor vehicle used for the transportation of property not less than $1,000 on property in the custody of the assured.

On each trailer used for the transportation of property not less than $500 on property in the custody of the assured.

Tariff Schedules

(Tariffs that do not comply with the following rules will be rejected)

31

All applications for certificates must be accompanied by two (2) copies of a tariff naming rates and fares to be charged for the transportation of persons or property between points on the proposed route, made up in accordance with Rules 31 to 42, inclusive.

32

The term "Joint rate", when used herein, means a rate that extends over the lines of two or more carriers.

The term "local rate", when used herein, means a rate that extends over the lines of one carrier only.

The term "joint tariffs", when used herein means those tariffs which contain, or are made up of, "joint rates".

The term "local tariffs", when used herein, means those tariffs which contain, or are made up of, "local rates".

33

In case of change of ownership or control of the transportation property, facilities, and service of a motor transportation company, or when its name is changed, the individual, firm, association or corporation which takes over such property and facilities and which will thereafter perform such services, if it desires to use the statements, schedules, time tables, distance tables, and tariffs of the former owner, shall, in addition to complying with the provisions of Rule 13 of these Rules, file with the Commission [fol. 51-22] and post in its principal office and at each

station or regular stopping place along its route, an adoption notice in substantially the following form; size of paper to be 8½ by 11 inches:

Adoption Notice

(Name of new person or corporation:) —— —— hereby adopts, ratifies and makes its own (or his own) in every respect, as if the same had been originally filed and posted by ——, all tariffs and supplements thereto, time schedules and supplements thereto, rules, notices, concurrences, traffic agreements, divisions, authorities, powers of attorney, or any other instruments whatsoever filed with The Public Utilities Commission of Ohio by (Name of old company or person:) ——————, under certificates of public convenience and necessity No. —, issued ——————, ——, effective —— —, 192-.

Issued by —— ——.

34

All tariffs must be printed on hard calendared paper of good quality from type of size not less than (6) point full face. Stereotype, planograph, mimeograph, multigraph or other printing press process may be used. Reproductions by Hectograph or similar process, typewritten sheets, or proof sheets must not be used for filing. Alterations in writing or erasures must not be made in tariffs before filing, neither can corrections be made after filing, except by supplement or re-issue.

35

All tariffs must be in book, sheet, or pamphlet form. Loose leaf plan may be used so that changes can be made by reprinting and inserting a single leaf, but, if changes are so made, no other supplements to same tariff may be used. Freight and passenger tariffs must be of size 8½ by 11 inches.

36

Copies of tariffs naming rates and fares to be charged, together with Rules and Regulations, if any, governing same, shall be kept open for public inspection by every motor transportation company at its principal office, and at

the terminus of each route or routes, and at the principal station or stations thereon. Tariffs naming passenger rates must be posted in a conspicuous place in each motor vehicle, and at places regularly used for loading or unloading passengers along the line or route.

[fol. 51-23] 37

Title page for all tariffs must be compiled substantially as follows:

(a) Tariffs must be numbered consecutively in the upper center of title pages, beginning with number 1, preceded by the letters P. U. C. O. as abbreviations for The Public Utilities Commission of Ohio. Where tariffs are issued cancelling tariffs previously filed, proper reference must be made to the P. U. C. O. numbers cancelled. The first tariff issued shall be numbered P. U. C. O. No. 1, and when this tariff is desired cancelled a new tariff shall be issued numbered P. U. C. O. No. 2, and carry notation immediately below "Cancels P. U. C. O. No. 1" as follows: P. U. C. O. No. 2; cancels P. U. C. O. No. 1

(b) Name of issuing carrier, and whether or not the tariff names local, joint, or local and joint rates (name of participating carrier if a joint tariff). When a trade name is used and the motor transportation company is not an incorporated company, the name of the individual or individuals composing such motor transportation company must precede such trade name, thus: John Doe and Richard Doe (co partnership), operating under the trade name of "Ohio Transportation Company".

(c) The date issued and date effective. The title page of all tariffs must show full thirty (30) days' notice or bear a notation showing the permission or decision of the Commission allowing same to become effective on less than thirty days' notice, except in case of "first filing," which may be done on one day's notice.

(d) Name, title and address of official by whom tariff is issued. If the official is located in a city, town or village having street addresses, the street address shall be shown.

(e) On upper left-hand corner of single sheet tariffs and on tariffs in loose leaf form, the words: "No supplement to this tariff will be issued except for the purpose of cancelling the tariff", shall appear.

On tariffs containing two, and not more than five pages: "Only one supplement to this tariff will be in effect at any one time".

On tariffs containing six and not more than ten pages: "Only two supplements to this tariff will be in effect at any time".

On tariffs containing over ten pages: "Only three supplements to this tariff will be in effect at any one time."

38

Passenger tariffs must contain:

(a) Rules and Regulations, if any, which govern the tariff in clear and explicit terms.

[fol. 51-24] (b) All tariffs must contain a rule with reference to rates applicable to intermediate points not specifically named in such tariff. This rule must read substantially as follows: "Rates from or to intermediate points not named herein will be the same as the rates from or to the next more distant point named."

(c) Full explanation of reference marks and technical abbreviations used in the tariff.

(d) Adult fares, definitely and specifically stated, in cents, or in dollars and cents, per passenger, children's fares, baggage rules, together with the names of the stations or stopping places from and to which they apply, arranged in a simple and systematic manner.

(e) Commutation rates by tickets or otherwise.

39

Freight tariffs must contain:

(a) Rules and regulations which govern the tariff, in clear and explicit terms, setting forth all privileges and services covered by the rates, such as free storage and store-door receipt and delivery.

(b) Alphabetically arranged and complete index of all commodities upon which special commodity rates are named. If all of the rates to each destination in the tariff are arranged alphabetically by commodities, or if not more than twenty-five commodities are carried in the tariff, no index need be shown.

(c) Where tariffs name class rates, a classification must be published or adopted. Such classification shall contain all articles or commodities arranged alphabetically, showing opposite each the class to which such article or commodity belongs. If such classification is carried in a separate publication, reference must be specifically made to this classification on the title page of tariff, immediately above the date issued and the effective date.

(d) Alphabetically arranged and complete index of points from which the tariff applies, and alphabetically arranged and complete index of points to which tariff applies. If not more than twenty-five points are carried in the tariff, no index need be shown.

(e) Full explanation of reference marks and technical abbreviations used in the tariff.

(f) All rates must be explicitly stated in cents or in dollars and cents, per one hundred pounds, or per ton of two thousand pounds, or per standard package or unit, together with the names of the places from and to which they apply, arranged in a simple and systematic manner.

(g) If desired, carriers may use a mileage table or distance table for basis of rates where specific rates are not shown. This generally is to cover movement by carriers not operating between fixed termini or over a regular route.

[fol. 51-25] 40

No motor transportation company shall charge, demand, collect or receive a greater, or less, or different compensation for the transportation of persons or property, or for any service in connection therewith, than the rates, fares and charges applicable to such motor transportation company as specified in its tariffs filed and in effect at the time,

nor shall any such motor transportation company refund or remit in any manner or by device any portion of the rates, fares or charges so specified, except upon an order or permission from the Commission, nor extend to any corporation or person any privilege or facility in the transportation of persons or property except such as are regularly and uniformly extended to all corporations and persons. No motor transportation company shall, directly, or indirectly issue, give, tender or honor any free ticket, or free pass except to its officers, agents, employes, and members of their families, or for charitable or patriotic purposes.

41

No motor transportaion company shall pay any commission to any individual, firm, association or corporation, their lessees, trustees or receivers, for the sale of any ticket or fare, unless upon contract or agreement in writing between the parties previously filed with and approved by the Commission.

42

No motor transportation company shall charge or receive any greater compensation in the aggregate for transportation of persons, or of like kind of property, for a shorter than for a longer distance over the same line in the same direction, the shorter being included within the longer distance, or to charge any greater compensation as a through rate than the aggregate of the intermediate rates, but this shall not be construed as authorizing any such common carrier to charge and receive as great a compensation for a shorter as for a longer distance or haul. Upon application of a motor transportation company, the Commission may authorize it to charge less for a longer than for a shorter distance for the transportation of persons or property in special cases after investigation by the Commission, but such permission must specifically prescribe the extent to which the motor transportation company making such application shall be relieved from the operation of this rule. Such rates carried in the tariff of the motor transportation company must bear specific reference to the permission of the Commission authorizing such violation of this rule.

Time Schedules

43

Application for a certificate must be accompanied by two copies of a working time schedule. Such schedule shall be printed, mimeographed, or multigraphed on good paper, [fol. 51-26] size 8½ by 11 inches, and may consist of as many pages as is found necessary. Time schedules on stiff, cardboard paper will not be accepted.

44

Individual cases, where proper showing is first made, motor transportation companies holding certificates authorizing freight service where no passenger service whatever is rendered in connection therewith, will be relieved of the necessity of complying with the provisions of paragraphs (a) and (b) of Rule 46 relating to actual time of arrival and departure from and at all termini and actual time of departure from all intermediate points. However, time and route schedules must show, approximately, amount of service to be rendered, route traversed, mileage between points, etc., as required by these Rules.

45

Title page of time schedules must be made up as follows:

(a) Time schedules must be numbered consecutively in the upper right-hand corner, beginning with number 1, and must show the number of the time schedule canceled thereby, if any.

(b) Name of the motor transportation company. If the motor transportation company is not an incorporated company, and a trade name is used, the name of the individual or individuals composing such motor transportation company must precede the trade name.

(c) The termini or points between which the time table applies briefly stated.

(d) Route traversed, definitely outlined, showing exact location of depot or parking place at all terminals.

(e) Date issued and date effective. If issued on less than thirty days' notice by permission of the Commission, the number and date of such special permission must be shown directly above the effective date.

(f) The name, title and address of the official issuing such time schedule, including street address.

46

Time schedule must show:

(a) The time of arrival and departure at and from all termini.

(b) The time or departure from intermediate points between termini.

(c) The distance between all points shown in the schedule.

(d) Time schedule shall show what points, if any, on route of carrier, to which service cannot be rendered, and reasons therefor.

[fol. 51-27] 47

At least one copy of such time schedule shall be posted in a conspicuous place, easily accessible for public inspection, at each station or regular stopping place on the line or route, and a copy shall be in the possession of each operator or driver.

48

Time schedules as filed with the Commission and posted for the information of the public must be adhered to.

49

Changes in time schedules affecting the time of arrival or departure of any motor vehicle at or from any station or stopping place on its line or route, or which will effect a reduction in the number of motor vehicles operating over any scheduled line or route, or which will effect a reduction in the amount of passenger vehicle service rendered at any

terminal, station or intermediate stop, must be made as follows:

(a) A new time schedule must be issued, bearing the next consecutive number, and shall show reference to number of time schedule canceled thereby, thus, if time schedule number 1 is desired to be corrected, time schedule number 2 shall be issued, showing that it is cancelling time schedule number 1, as follows: Time Schedule No. 2; cancels Time Schedule No. 1.

(b) Two copies of such time schedule shall be filed with the Commission and notice must be given to the public by posting a copy in a conspicuous place at each station or stopping place affected, at least thirty days before the effective date thereof.

(c) After such thirty days, such time table shall be considered in full force and effect, unless ordered withdrawn, modified or suspended.

(d) The Commission may, on its own motion, or on the filing of a sufficient protest by any person or persons affected, order such time schedule withdrawn, modified or suspended.

(e) In case of actual emergency, or when real merit is shown, the Commission may, in its discretion, permit such time schedule to become effective on less than the thirty days' notice, in which case the time schedule must show on the title page thereof, directly under the effective date, the number and date of such special permission, as follows, to-wit: Date effective: ——— —, ——. P. U. C. O. Special Permission No. —. Dated ——— —, ——.

[fol. 51-28] 59

All interruptions of regular service, where such interruptions are likely to continue for more than twenty-four hours, shall be promptly reported in writing to the Commission, and to the public along the route, with full statement of the cause of such interruption, and its possible duration.

51

No motor transportation company shall discontinue the service called for under its certificate and time schedule filed thereunder, without first having given to the Commission and to the public at least ten days' notice in writing of the intention to discontinue such service, and having secured from the Commission permission so to do.

Equipment of Motor Vehicles

52

All motor vehicles shall be maintained in a safe and sanitary condition at all times and shall be at all times subject to inspection by the Commission and its duly authorized representatives.

53

All motor vehicles used in the transportation of passengers and having a covered top or top up, shall maintain a light or lights of not less than two candle power each, within the vehicle and so arranged as to light up the whole of the interior thereof, except that portion occupied by the driver.

54

All motor vehicles used in the transportation of passengers shall, when leaving a terminus, be equipped with at least one extra serviceable tire, except where carrier is engaged in a purely local service within the corporate limits of a municipality and maintains a service car.

55

All motor vehicles used in the transportation of passengers shall be equipped with a standard speedometer which shall be maintained in good working order.

56

Passengers carrying motor vehicles shall be equipped with a suitable heating system sufficient to keep the same reasonably comfortable for its patrons.

[fol. 51-29] 57

Sufficient reserve equipment shall be maintained by all motor transportation companies to insure the reasonable maintenance of established routes and fixed time schedules.

58

Every motor vehicle, used in transporting passengers, shall at all times carry a set of skid chains which shall be applied to the rear wheels whenever necessary to prevent skidding.

59

Every motor vehicle shall be provided with good and sufficient brakes, and with suitable horn or other signal which shall be rung or blown as a signal or warning to any person, or whenever there is danger of collision or accident.

60

Every motor vehicle, used for transporting passengers, shall be equipped with an exit door at the side and rear end thereof, or shall have a door on each side thereof, free and clear of any steering apparatus or other obstruction. Such exit doors shall open outwardly toward the natural means of egress and shall always be unlockable from within. But in case of left drive motor vehicles equipped with cross seats and with unobstructed exit doors from each compartment on the right side, the seats will not be considered an obstruction provided there is one exit door on the left side back of the driver's seat.

61

Every motor vehicle shall be equipped at all times with two red flags and two red flash lights of suitable size to be used in flagging approaching trains when in danger at railroad crossings. Such flash lights to be kept properly charged and in good working order at all times.

Operation

62

All motor vehicles shall be operated in accordance with the requirements of law, and no driver or operator thereof

shall operate the same in any other than a careful and prudent manner, nor at any greater speed than is reasonable or proper, having due regard to the traffic and use of the way by others, or so as to endanger the life and limb of any person.

{fol. 51-30}

63

Drivers of motor vehicles shall be American citizens, twenty-one years of age, of good moral character, shall be fully competent to operate the vehicle under their charge, and shall hold a certificate or license from the Secretary of State as provided in section 614-97 of the Act.

64

No driver or operator of a motor vehicle shall drink any intoxicating liquor during the time he is on duty, or at any time use intoxicating liquor to excess.

65

No driver or operator of motor vehicle carrying passengers shall smoke any cigar, cigarette, tobacco or other substance in such vehicle during the time he is driving the vehicle.

66

No driver or operator of a motor vehicle carrying passengers shall carry on any unnecessary conversation with passengers while vehicle is in motion.

67

No driver or operator of any motor vehicle, used in the transportation of passengers, shall refuse to carry any person offering himself or herself at any regular stopping place for carriage and who tenders the regular or published fare to any regular stopping place on the route of said motor vehicle, if allowed to carry passengers to such point under the certificate for such route, unless at the time of such offer the seats of said motor vehicle are fully occupied; provided, however, that the driver or operator of such motor vehicle may refuse transportation to any

person who is in an intoxicated condition or conducting himself or herself in a boisterous or disorderly manner or is using profane language.

68

Drivers and operators of motor vehicles shall not allow passengers to ride on running boards, fenders, platforms, engine hood, or on any other outside portion of said motor vehicle.

69

No more than two persons including the driver shall ride in the front seat of any motor bus unless the driver's seat is separated from the front seat, then two passengers may ride in the front seat provided there is 16 inches of seat space for each person.

[fol. 51 31]

70

The front seat of all passenger carrying motor vehicles shall be considered as an emergency seat, and no passenger will be allowed to occupy the same unless all the other seats of such motor vehicle are fully occupied.

[Paragraph 70 stamped canceled.]

71

No motor vehicle or trailer used for the transportation of passengers or property, shall be operated carrying or transporting any baggage, trunk, crate or other articles which extend more than eight (8) inches beyond the running boards of a passenger carrying motor vehicle or more than eight (8) inches beyond the side body lines of any motor vehicle or trailer carrying property only.

72

Except when specifically authorized by the Commission, no motor vehicle used in the transportation of passengers shall be driven or operated with any trailer or other vehicle attached thereto; except in case a vehicle becomes disabled while on a trip and is unable to run from its own power,

such disabled vehicle may be towed to the nearest point where repair facilities are available.

73

No motor vehicle used for the transportation of property shall be used for towing or propelling any trailer or any other vehicle used as a trailer, unless such trailer is listed with the Commission and the tax or fee paid on same.

74

Each trailer shall be attached to the vehicle, by which it is drawn, by stay chains in addition to the coupler.

75

Accidents arising from, and in connection with the operation of motor vehicles resulting in injury to any person, or in damage to any property exceeding the sum of Two Hundred and Fifty Dollars ($250.00), shall be immediately reported to the Commission, in writing. Such reports must be plainly written or typed on one side of the paper only, and shall set forth:

(a) The time and place of accident.

(b) The names and addresses of the owners of all vehicles involved.

(c) The names and addresses of the drivers or operators of all vehicles involved.

[fol. 51-32] (d) The state license plate number, make and type of all vehicles involved.

(e) The certificate number of the route on which such accident occurred.

(f) The number of passengers, if any, in each of the vehicles involved.

(g) The names and addresses of all persons injured or killed.

(h) A full and complete report of the accident, cause, party or parties responsible, if any, condition of roads, weather conditions, speed of vehicles involved, etc.

(Report should be mailed immediately to The Public Utilities Commission of Ohio, Columbus, Ohio. Forms or blanks are not supplied.)

76

The amount of freight, express or baggage, that may be carried in a motor vehicle with passengers, shall not be greater than can be safely and conveniently carried without causing discomfort to the passengers.

77

No motor transportation company, its agents, officers, or employes, shall suffer or permit any of the articles hereinafter specified to be loaded in or upon any motor vehicle then and there used or employed by it in the transportation of passengers:

Liquid nitrogen, dynamite, nitrocellulose, fulminate of mercury, fireworks, firecrackers, torpedoes, high explosives; black, brown or smokeless powders; ammunition, other than for small arms; explosive projectiles, blasting caps, detonating fuses, primers, time fuses, hydrochloric acid, compressed gasses, gasoline in packages, hydrofluoric acid, nitrating acid, sulphuric acid, liquified petroleum gas, matches in commercial quantities, burnt cotton, calcium phosphide, carbon bisulphide, celluloid scraps, chloride of phosphorous, chloride of sulphur, distillate in packages, naphtha in packages, gas, oil, petroleum oil in packages, phosphorous, picric acid, metallic and sulphide potassium, pyroxylin solution, metallic peroxide, and sulphide sodium; liquid bichloride of tin, trinitrotuluol.

78

No motor vehicle shall leave its terminus on any trip requiring travel after one-half hour after sunset, or before one-half hour before sunrise, unless its lighting system is in proper condition. Should the lighting system become defective or out of order, the vehicle shall be brought to a stop at a point out of the line of travel of the roadway, and shall not proceed until the defect is remedied.

[fol. 51-33] 79

(a) No motor transportation company shall announce or maintain a time schedule that shall require unlawful, unsafe, unreasonable or excessive speed.

(b) Upon approaching any bridge, sharp curve, dugway, deep descent, or other dangerous place; or in traversing such bridge, curve, dugway, descent or other dangerous place, the driver or operator of a motor vehicle shall slow down, and have the vehicle under complete control.

(c) Drivers of common carrier motor vehicles shall bring each such motor vehicle to a full stop before crossing the track or tracks of any steam or electric interurban railroad, such stops to be made not more than seventy-five feet from the nearest rail of the crossing, and at points where the clearest view of approaching trains, locomotives or cars can be had. After making the stops hereby required, the driver or operator of the motor vehicle, shall carefully look in each direction for approaching trains, locomotives or cars, and if certain that no such train, locomotive or car is approaching, he shall then cross said track or tracks with the transmission of said vehicle in not higher than second gear, in the case of progressive or selective type transmission, or low gear in the case of planetary transmissions.

(The foregoing shall not apply to common carrier motor vehicles within municipalities of the state insofar as regards operation over the tracks of electric railways within public streets.)

Determination of Seating Capacity

80

The seating capacity of motor vehicles engaged in the transportation of passengers, to which these Rules are applicable, shall be determined by dividing the total length of seats in inches by sixteen, this formula being based upon an allowance of sixteen inches per passenger.

Annual Reports

81

Every motor transportation company shall keep an accurate record of the receipts from operation, operating and other expenses, etc., and shall file with the Commission, at such times and in such form as it may prescribe, an annual report, duly verified, covering the yearly period fixed by the Commission. The Commission shall prescribe the character of the information to be embodied in such annual report, and shall furnish a blank form therefor.

[fol. 51-34] General Application

82

The above rules and regulations are for general application and are subject to changes and modifications as the Commission from time to time may deem advisable, and also subject to such exceptions as may be determined by the Commission to be just and reasonable in individual cases.

Penalties

83

Every officer, agent or employee of any corporation, and every other person who violates or fails to comply with or who procures, aids or abets in the violation of any provision of section 614-84 to 614-102, inclusive, of the General Code, or who fails to obey, observe or comply with any order, decision, rule or regulation, direction, demand or requirement, or any part or provision thereof, of The Public Utilities Commission, or who procures, aids or abets any corporation or person in his failure to obey, observe or comply with any such order, decision, demand or regulation, or any part or provision thereof, shall be deemed guilty of a misdemeanor and, upon conviction, shall be punished by a fine not exceeding one thousand dollars, or by imprisonment in the county jail not exceeding one year, or by both such fine and imprisonment.

84

Each rule of this order, and every part thereof, is hereby declared to be independent rules and parts of rules, and the holding of any rule or part thereof to be void or ineffective for any cause shall not affect any other rule or part thereof.

Motor Transportation Law

Sec. 614-2. The following words and phrases used in this chapter unless the same is inconsistent with the text, shall be construed as follows:

The term "commission" when used in this act, or in chapter one, division two, title three, part first of the General Code and the acts amendatory or supplementary thereto means "The Public Utilities Commission of Ohio."

The term "commissioner" means one of the members of such commission.

Any person, or persons, firm or firms, co-partnership or voluntary association, joint stock association, company or corporation, wherever organized or incorporated:

[fol. 51-35] When engaged in the business of transmitting to, from, through or in this state, telegraphic messages, is a telegraph company;

When engaged in the business of transmitting to, from, through or in this state, telephonic messages, is a telephone company and as such is declared to be a common carrier;

When engaged in the business of carrying and transporting persons or property, or both as a common carrier, for hire, in motor propelled vehicles of any kind whatsoever, under private contract or for the public in general, over any public street, road or highway in this state, except as otherwise provided in section 614-84, is a motor transportation company;

When engaged in the business of carrying and transporting persons or property, or both, in motor propelled vehicles of any kind whatsoever, for hire, under private contract but not as a common carrier over any public street, road or highway, in this state is a private contract carrier;

The term "motor propelled vehicle" when used in this chapter means any automobile, automobile truck, motor

bus, or any other self-propelled vehicle not operated or driven upon fixed rails or track;

When engaged in the business of supplying electricity for light, heat or power purposes to consumers within this state, is an electric light company;

When engaged in the business of supplying artificial gas for lighting, power or heating purposes to consumers within this state, is a gas company;

When engaged in the business of supplying natural gas for lighting, heating or power purposes to consumers within this state, is a natural gas company;

When engaged in the business of transporting natural gas or oil through pipes or tubing, either wholly or partly within this state, is a pipe line company;

When engaged in the business of supplying water through pipes or tubing, or in a similar manner to consumers within this state, is a water work company;

When engaged in the business of supplying water, steam or air through pipes or tubing to consumers within this state for heating or cooling purposes, is a heating or cooling company;

When engaged in the business of supplying messengers for any purpose, is a messenger company;

When engaged in the business of signaling or calling by an electrical apparatus, or in a similar manner, for any purpose, is a signaling company;

When engaged in the business of operating, as a common carrier a railroad, wholly or partly within this state with one or more tracks upon, along, above or below any public road, street, alley way or ground, within any [fol. 51-36] municipal corporation, operated by any motive power other than steam, and not a part of an interurban railroad, whether such railroad be termed street, inclined plane, elevated or underground railroad, is a street railroad company;

When engaged in the business of operating as a common carrier whether wholly or partially within this state, a part of a street railway constructed or extended beyond the limits of a municipal corporation, and not a part of an interurban railroad is a suburban railroad company;

When engaged in the business of operating a railroad, wholly or partially within this state, with one or more

tracks from one municipal corporation or point in this state to another municipal corporation or point in this state, whether constructed upon the public highways or upon private rights-of-way, outside of municipalities, using electricity or other motive power than animal or steam power for the transportation of passengers, packages, express matter, United States mail, baggage and freight, is an interurban railroad company, and included in the term "railroad," as used in section 501 of the General Code. The term "railroad," when used in this act, includes all railroads, interurban railroad companies, express companies, freight line companies, sleeping car companies, equipment companies, car companies, water transportation companies, and all persons and associations of persons, whether incorporated or not, operating such agencies for public use in the conveyance of persons or property within this state.

Sec. 614-2a. The term "public utility" as used in this act, shall mean and include every corporation, company, co-partnership, person or association, their lessees, trustees or receivers, defined in the next preceding section, except private contract carriers and except such public utilities as operate their utilities not for profit, and except such public utilities as are, or may hereafter be owned or operated by any municipality, and except such utilities as are defined as "railroads" in sections 1 and 502 of the General Code, and these terms shall apply in defining "public utilities" and "railroads" wherever used in chapter one, division two, title three, part first of the General Code and the acts amendatory or supplementary thereto or in this act.

Sec. 614-84. (a) The term "motor transportation company," when used in this chapter, means every corporation, company, association, joint stock association, person, firm or co-partnership, their lessees, trustees, receivers or trustees appointed by any court whatsoever, owning, controlling, operating or managing any motor propelled vehicle not usually operated on or over rails, used in the business of transportation of persons or property, or both, as a common carrier, for hire, under private contract or for the public in general, over any public highway in this state; provided, however, that the term "motor transportation

company" as used in this chapter shall not include any pri-
[fol. 51-37] vate contract carrier, as defined in section 614-2, and shall not include, any person or persons, firm or firms, co-partnership or voluntary association, joint stock association, company or corporation, wherever organized or incorporated, in so far as they own, control, operate or manage a motor vehicle or motor vehicles used for the transportation of persons or property, or both, and which are operated exclusively within the territorial limits of a municipal corporation, or within such limits and the territorial limits of municipal corporations immediately contiguous thereto, or in so far as they own, control, operate or manage taxicabs, hotel busses, school busses or sightseeing busses, or in so far as they own, control, operate or manage motor propelled vehicles, the use of which is for the private business of the owners and the use of which for hire is casual and disassociated from such private business.

(b) The term "public highway," when used in this chapter, means any public street, road or highway in this state, whether within or without the corporate limits of a municipality.

(c) The words "fixed termini," when used in this chapter, shall be understood to refer to the points between which any motor transportation company usually, or ordinarily operates or manages any motor propelled vehicle, and the words "regular route" shall be understood to refer to that portion of the public highway over which any motor transportation company usually, or ordinarily operates or manages any motor propelled vehicle. The words "irregular route," shall be understood to refer to that portion of the public highway over which is conducted any other operation of any motor propelled vehicle by a motor transportation company. Whether or not any motor propelled vehicle is operated by such motor transportation company, between fixed termini or over a regular route or irregular route within the meaning of this chapter; or whether or not the operator or carrier is engaged as a motor transportation company or a private contract carrier, shall be questions of fact and the finding of the commission thereon shall be a final order which may be re-

viewed as provided in section 614-89 of the General Code. And the commission is given jurisdiction to receive, hear and determine any complaint that may be filed in good faith against any private contract carrier that it has ceased to be such and has become a common carrier. Upon such complaint being filed the commission shall set the date for hearing which shall be not less than fifteen days after the filing of the complaint. Upon the date set the commission shall conduct a hearing and if it shall find that the private contract carrier complained against has ceased to be such, such carrier shall become subject to the provisions of this chapter applicable to a motor transportation company, and the commission may proceed in like manner upon its own initiative.

Sec. 614-85. No motor transportation company, its lessees, trustees, receivers or trustees appointed by any court [fol. 51-38] whatsoever, shall operate any motor propelled vehicle for the transportation of persons or property, or both, for hire, on any public highway in this state except in accordance with the provisions of this chapter.

Sec. 614-86. The public utilities commission of the state of Ohio is hereby vested with power and authority to supervise and regulate each such motor transportation company in this state; to fix, alter and regulate rates; to regulate the service and safety of operation of each such motor transportation company; to prescribe safety regulations, and designate stops for service and safety on established routes; to require the filing of annual and other reports and of other data by such motor transportation companies; to provide uniform accounting systems; and to supervise and regulate motor transportation companies in all other matters affecting the relationship between such companies and the public to the exclusion of all local authorities in this state. The commission, in the exercise of the jurisdiction conferred upon it by this chapter, shall have the power and authority to prescribe rules and regulations affecting such motor transportation companies, notwithstanding the provisions of any ordinance, resolution, license, or permit heretofore enacted, adopted or granted by any incorporated city or village, city and county, or county, and in case of conflict between any such ordinance, resolution, license or permit, the order, rule or regulation

of the public utilities commission shall, in each instance prevail; provided that such local subdivisions may make reasonable local police regulations within their respective boundaries not inconsistent with the provisions of this chapter.

Sec. 614-87. No motor transportation company shall begin to operate any motor propelled vehicle for the transportation of persons or property, or both, for hire, between fixed termini or over a regular or irregular route in this state, without first obtaining from the public utilities commission a certificate declaring that public convenience and necessity require such operation.

The commission shall have the power, after notice and hearing, when the applicant requests a certificate to operate in a territory already served by a motor transportation company holding a certificate of public convenience and necessity from the commission, to grant a certificate only when the existing motor transportation company or companies serving such territory do not provide the service required or the particular kind of equipment necessary to furnish such service to the satisfaction of the commission, and in all other cases, with or without hearing, to issue such certificates as prayed for, or to refuse to issue the same, or to issue them for the partial exercise only of the privileges sought, or to issue such certificates for the use of certain kinds of equipment and for the handling of certain kinds of material or merchandise over such routes, and may attach to the exercise of the rights granted by such certificates, such terms and conditions as, in its judgment, the public convenience and necessity may require. [fol. 51-39] Where a motor transportation company has been actually operating in good faith upon the date of filing the original act in the office of the secretary of state, April twenty-eight, nineteen hundred twenty-three, it shall file with the commission an affidavit showing its principal place of business, full information concerning the physical property, the route over which it has been operating, the schedule or schedules, together with a map of its route, showing the number of miles of route in each municipality and county into, through or along which such route runs or extends, a statement that it has been actually operating over such route or routes in good faith, together with the

liabilty insurance policy or policies required under section 614-99 of the General Code, and thereupon a certificate of public convenience and necessity shall issue, if the commission shall find the statements in said affidavit to be true. But no certificate shall be granted upon any such affidavit unless the same shall have been filed prior to the passage of this act.

Upon the payment of the fee provided under section 614-94 of the General Code to the commission, such motor transportation company may continue to operate and shall be governed in all respects as if such motor transportation company had made a written application.

Before granting any certificate the commission shall take into consideration other existing transportation facilities in the territory for which a certificate is sought, and in case it appears from the evidence that the service furnished by existing transportation facilities is reasonably adequate the commission shall not grant such certificate.

The commission may at any time for a good cause suspend and upon at least five days' notice to the grantee of any certificate and an opportunity to be heard, revoke, alter or amend any certificate issued under the provisions of this chapter.

On finding of the public utilities commission that any motor transportation company does not give convenient and necessary service in accordance with the order of such commission such motor transportation company shall be given a reasonable time, not less than sixty days, to provide such service before any existing certificate is cancelled or a new one granted over the route mentioned in the finding and order of or hearing before the public utilities commission.

Sec. 614-87a. Upon the death of a person operating as a motor transportation company under a certificate of public convenience and necessity, his personal representative or representatives may operate under such certificate while the same remains in force and effect, and, with the consent of the commission, may transfer such certificate.

Upon the dissolution of a partnership operating as a motor transportation company under a certificate of public convenience and necessity, caused by death or otherwise, in the event the surviving or remaining partner or part-

ners acquire the assets of the partnership, the partner or [fol. 51-40] partners so acquiring such assets may continue to operate under such certificate while the same remains in force and effect, and, with the consent of the commission, may transfer such certificate; upon the dissolution of a partnership operating a motor transportation company under a certificate of public convenience and necessity, caused by death, in the event the surviving partner or partners do not acquire the assets of the partnership, then such surviving partner or partners and the personal representative or representatives of the deceased partner or partners may transfer such certificate with the consent of the commission.

Sec. 614-88. Except as provided in section 614-84, no corporation or person, their lessees, trustees, receivers or trustees appointed by any court, whatever, shall operate any automobile, jitney, bus, truck, stage, auto stage, or rent for hire car, for the transportation of persons or property or both, or rent for hire car, for the transportation of persons or property or both, for compensation, over any public street, road or highway in the state between fixed termini or over a regular or irregular route, over which any motor transportation company is operating under a certificate of convenience and necessity issued by the commission as provided in this act, until such corporation or person, their lessees, trustees, receivers or trustees appointed by any court, whatsoever, shall have secured a certificate of public convenience and necessity or permission from the commission to so operate, and then only in strict accordance with such rules as the commission may prescribe for such operation.

Sec. 614-89. In all respects in which the public utilities commission has power or authority under this act, applications and complaints may be made and filed with such commission and filed, petitions for rehearings filed and acted upon, and all proceedings before the supreme court of this state considered and disposed of by such court in the manner, under the conditions and subject to the limitations and with the effect specified in the sections of the General Code governing the supervision of other public utilities by the commission.

Sec. 614-90. The commission shall adopt rules prescribing the manner and form in which such motor transportation companies as defined in this act shall apply for the certificates of public convenience and necessity. Among other rules adopted there shall be the following:

(a) Application shall be made in writing on the blanks furnished by the commission and shall show the principal office or place of business and residence of such motor transportation company.

(b) Shall contain full information concerning the physical property used or to be used by the applicant.

(c) The complete route over which the applicant operates or desires to operate, showing the number of miles of said route in each municipality and county.

[fols. 51-41] (d) The proposed time schedule or schedules or time cards of the applicant, if operating between fixed termini or over a regular route.

(e) The schedule or tariff showing the passenger or freight rates to be charged between the several points, if operating between fixed termini or over a regular route.

In all other cases a certificate of public convenience and necessity shall not be transferred except with the consent of the commission, after a public hearing had thereon. This should be the last paragraph of Sec. 614-87a on page 40.

Sec. 614-91. Such application shall contain a map, showing the highway or highways and public places upon and over which such motor transportation company is to operate, and the number and kind of motor vehicles to be used in carrying on the business of such motor transportation company. The applicant shall give notice of the filing of such application by publication made once a week for three weeks immediately prior to the day set for said hearing, in a newspaper of general circulation published at the county seat of each county in or through which the applicant proposes to operate, or in one newspaper published in and of general circulation throughout the territory in or through which the applicant proposes to operate. Such published notice shall state the fact that such application has been made, the route proposed to be operated, the number of

motor vehicles to be used, the number of trips to be made daily, and the name and address of the applicant. Upon application for a certificate to operate between fixed termini or over a regular route, the commission shall give written notice of the filing of such application to all motor transportation companies, street railroads, interurban railroads and steam railroads operating in the territory through which the applicant proposes to operate. The commission shall, after the filing of such application, fix a date for hearing upon the same, unless the commission in its discretion deems such hearing unnecessary and the best interests of the public require that said application be granted or rejected without such hearing. When a date for the hearing is fixed the commission shall give the applicant, all other motor transportation companies, street railroads, interurban railroads and steam railroads operating in the territory through which the applicant proposes to operate at least ten days' notice of such hearing. The applicant shall have the right, either before or after hearing or action by the commission to amend, modify or alter such application by filing with the commission an amendment to such application or a supplemental application which shall in turn be considered by the commission and be governed in the same manner as is provided in case of an original application.

Sec. 614-92. Except as otherwise expressly provided, it shall be unlawful for any motor transportation company as defined in this act to operate in this state on any route, other than the route provided for in the certificate granted by the commission; or to fail or refuse to operate on the [fols. 51-42] whole of the route, in the manner and at the time specified in the certificate; except in case of emergency due to the act of God or unavoidable accident or casualty or the route becoming impassable, or in case it becomes necessary to make temporary detours; and it shall be unlawful for any such motor transportation company to neglect or refuse to comply with and obey any and all regulations and orders of the commission and other statutory laws and regulations of the state of Ohio governing and applying to such motor vehicles, provided, however, that nothing in this act shall prohibit a motor transportation company as defined hereunder and not operating between

fixed termini from making causal trips over routes established hereunder.

Sec. 614-93. Any motor transportation company as defined in this chapter may, at any time after a certificate is granted or refused, file a new application or supplement any former application, for the purpose of changing, extending or shortening the route, or increasing or decreasing the number of vehicles, or for the doing of any other act or thing which the applicant might be permitted to do under the general statutory laws and regulations of the state of Ohio.

Sec. 614-94. Every motor transportation company now operating or which shall hereafter operate in this state shall at the time of the issuance of such certificate, and annually thereafter on or between January 1st and January 15th of each calendar year, pay to the treasurer of state the following taxes for the expense of the administration and enforcement of the provisions of section 614-84 to 614-102 of the General Code, and for the maintenance and repair of the highways of the state; all taxes levied upon the issuance of a certificate to any motor transportation company shall be reckoned as from the beginning of the quarter in which such certificate is issued.

For each motor propelled vehicle operating between fixed termini or over a regular route, carrying seven passengers, or less, forty dollars; for each such motor propelled vehicle carrying more than seven but not more than twelve passengers, ninety dollars; for each such motor propelled vehicle carrying more than twelve but not more than eighteen passengers, one hundred and forty dollars; for each such motor propelled vehicle carrying more than eighteen but not more than twenty four passengers, one hundred and eighty dollars; and for each such motor propelled vehicle carrying more than twenty-four passengers, two hundred and thirty dollars.

For each motor propelled vehicle not operating between fixed termini or over a regular route, carrying seven passengers or less, twenty dollars; for each such motor propelled vehicle carrying more than seven but not more than twelve passengers, fifty dollars; for each such motor propelled vehicle carrying more than twelve but not more than eighteen passengers, ninety dollars; for each such

motor propelled vehicle carrying more than eighteen but [fol. 51-43] not more than twenty-four passengers, one hundred and fifteen dollars; and for each such motor propelled vehicle carrying more than twenty-four passengers, one hundred and fifty dollars.

For each motor propelled vehicle used for transporting property between fixed termini or over a regular route the manufacturer's rated carrying capacity of which is one and three-fourth tons or less, forty dollars; for each such motor propelled vehicle the manufacturer's rated carrying capacity of which is more than one and three-fourths tons but not more than two and one-half tons, eighty dollars; for each such motor propelled vehicle the manufacturer's rated carrying capacity of which is more than two and one-half but not more than three and one-half tons, one hundred and forty dollars; and for each such motor propelled vehicle the manufacturer's rated carrying capacity of which is more than three and one-half tons, two hundred dollars.

For each motor propelled vehicle used for transporting property not between fixed termini or over a regular route the manufacturer's rated carrying capacity of which is one and three-fourths tons or less, twenty dollars; for each such motor propelled vehicle the manufacturer's rated carrying capacity of which is more than one and three-fourths but not more than two and one-half tons, fifty dollars; for each such motor propelled vehicle the manufacturer's rated carrying capacity of which is more than two and one-half but not more than three and one-half tons, one hundred dollars; and for each such motor propelled vehicle the manufacturer's rated carrying capacity of which is more than three and one-half tons, one hundred and fifty dollars.

For each motor propelled vehicle used by any such company for transporting both persons and property simultaneously the tax shall be computed on the basis of either tonnage or passenger capacity and the basis which yields the greater revenue shall apply.

A trailer used by a motor transportation company hereunder shall be taxed at a rate equal to twenty per cent of that levied upon the vehicle by which it is drawn.

In case of emergency, or unusual temporary demands for transportation, the taxes for additional motor propelled vehicle for limited periods shall be fixed by the commission

in such reasonable amounts as may be prescribed by general rule or temporary order.

Sec. 614-94a. When any motor transportation company holds a certificate for operation between fixed termini or over a regular route and also holds a certificate for operation over an irregular route, such motor transportation company may operate over such irregular route and in such irregular service any motor propelled vehicle upon which the tax for operation over a regular route has been paid as required by the provisions of this chapter without the further payment of the tax required of motor propelled vehicles operating over irregular routes.

[fol. 51-44] Sec. 614-95. The treasurer of state shall open an account with each municipal corporation and county into, through or along which the route of each such motor transportation company runs or extends, and shall apportion fifty per cent of the taxes imposed by section 614-94 in accordance with the lineal miles of route in each municipal corporation and county. The remaining fifty per cent of such taxes shall belong to the state of Ohio and shall be paid into the state treasury to the credit of the state maintenance and repair fund.

The treasurer of state shall be the custodian of such funds and shall disburse the same in the manner provided in section 614-96 of the General Code. The treasurer of state is hereby authorized to deposit any portion of the funds due municipal corporations and counties into, through or along which the route runs or extends, not needed for immediate distribution, in the same manner and subject to all the provisions of law with respect to the deposit of active state funds by such treasurer; and all interest earned by such funds so deposited shall be collected by him and placed in the state treasury to the credit of the "state maintenance and repair fund." On the first business day of each month, the auditor of state on the requisition of the treasurer of state shall draw and transmit to the auditor of each county a warrant on the treasurer of state for the amount of the tax collections apportioned to the municipal corporations and counties into, through or along which the route of such motor transportation company runs and extends, accompanying the same with a statement showing the distribution of the amount represented thereby to each

such municipal corporation or county. The county auditor shall certify the amount so transmitted into the county treasury to be disposed of as herein provided.

Sec. 614-96. The revenue collected under the provisions of section 614-94 of the General Code shall be distributed as follows:

(1) Fifty per centum of all taxes collected under section 614-94 of the General Code shall be for the use of the municipal corporations or counties into, through and along which the route of such motor transportation company runs and extends. Such moneys shall be paid into the treasury of the proper county as provided herein and the proper portions distributed to the municipal corporations in accordance with the miles of route in such municipal corporation. In the treasuries of such municipal corporations and counties, such money shall constitute a fund which shall be used for the maintenance and repair of public roads, highways and streets and for no other purpose, and shall not be subject to transfer to any other fund. "Maintenance and repair" as used in this section includes all work done upon any public road or highway or upon any street, in which the existing foundation thereof is used as the subsurface of the improvement thereof, in whole or in substantial part.

(2) The "state maintenance and repair fund" shall be [fols. 51-45] available for the use of the public utilities commission of Ohio in defraying the expenses incident to maintaining the bureau of the department for carrying out and enforcing the provisions of sections 614-84 to 614-102, inclusive, of the General Code, including the payment of salaries, traveling expenses, printing and other expenses, and for the use of the director of highways and public works in the manner provided by law. The General Assembly shall make appropriations therefrom for such purpose.

Sec. 614-97. It shall be unlawful for any motor transportation company as defined in this chapter to cause, allow or permit any motor propelled vehicle operated by it as a motor transportation company to be driven by any person under the age of twenty-one years; and such person shall be an American citizen and shall be skilled in the art

of driving such public motor vehicle, and without physical disabilities or personal habits which would disqualify him or make him an unsuitable person to serve as driver of such public motor vehicle.

For the purpose of determining the qualifications of such chauffeur or driver, the secretary of state shall be governed by section 6302 of the General Code, in so far as the same may be applicable. Upon the issuance of the certificate to drive, the applicant shall pay the registration fee and no further fee shall be charged or examination required by the state or any local authorities in the state. The term "local authorities" as used herein means all officers, boards and commissions of counties, cities, villages or townships. In case of sickness, accident or other emergency, any other licensed driver may be substituted.

Sec. 614-98. The fees and charges provided under section 614-94 of the General Code shall be in addition to taxes, fees and charges fixed and exacted by other provisions of the general laws of Ohio; except the assessments required by section 606 of the General Code, but all fees, license fees, annual payments, license tax, or taxes, or other money exactions, except the general property tax, assessed, charged, fixed or exacted by local authorities, such as municipalities, townships, counties, or other local boards, or the officers of such subdivisions shall be deemed to be illegal and be superseded by this act. On such motor transportation company complying with the provisions of this act, all local ordinances, resolutions, by-laws and rules in force shall cease to be operatives as to them, except that such local subdivisions may make reasonable local police regulations within their respective boundaries not inconsistent with the provisions of this act.

Sec. 614-99. No certificate of convenience and necessity shall be issued by the commission to any motor transportation company until such motor transportation company shall have filed with the commission a liability insurance policy or bond satisfactory to the commission in such sum and with such other terms and provisions as the commission may deem necessary adequately to protect the interests of the public having due regard for the number of persons and amount [fol. 51-46] of property affected, which policy, policies or

bonds shall insure the motor transportation company against loss sustained by reason of the death of or injuries to persons and for loss of or damage to property resulting from the negligence of such motor transportation company, and shall have filed with the commission a freight cargo insurance policy or bond adequately to protect the interests of the shipping public, which policy or bond shall insure the motor transportation company against all loss in excess of fifty dollars sustained by reason of any loss or damage to the property being transported.

Such policy or bond shall further provide that ten days' notice in writing shall be given to the public utilities commission of intention to cancel such policy of insurance.

If such policy or bond is cancelled during the term thereof or in event the same should lapse for any reason, the commission shall require such motor transportation company to replace such policy or bond with another fully complying with the requirements of this section, and in default thereof the certificate shall be deemed revoked.

Section 614-100. Every officer, agent or employe of any corporation, and every other person who violates or fails to comply with or who procures, aids or abets in the violation of any provision of sections 614-84 to 614-102, inclusive, of the General Code, or who fails to obey, observe or comply with any order, decision, rule regulation, direction, demand or requirement, or any part or provision thereof, of the public utilities commission, or who procures, aids or abets any corporation or persons in his failure to obey, observe or comply with any such order, decision, demand or regulation, or any part or provision thereof, shall be deemed guilty of a misdemeanor and, upon conviction, shall be punished by a fine not exceeding one thousand dollars, or by imprisonment in the county jail not exceeding one year, or by both such fine and imprisonment.

Sec. 614-101. Neither sections 614-84 to 614-102, inclusive, of the General Code, nor any provisions thereof, shall apply or be construed to apply to commerce with foreign nations or countries, or among the several states of this Union, except in so far as the same may be permitted under the provisions of the constitution of the United States and the acts of congress.

Sec. 614-102. Each section of this act, and every part thereof, is hereby declared to be independent section and parts of sections, and the holding of any section or part thereof to be void or ineffective for any cause shall not affect any other section or part thereof.

G. C. Sec. 6292. Each owner of a motor bicycle, motorcycle or passenger car shall pay or cause to be paid taxes as follows:

For each motor bicycle or motorcycle, two dollars and fifty cents; and for each side car, one dollar and fifty cents. [fols. 51-47 & 51-48] For the calendar year 1925 and if House Bill 44 enacted by this session of the General Assembly shall not have become a law, for each calendar year thereafter for each passenger car having twenty-five horsepower or less eight dollars; for each such car having more than twenty-five horsepower or less, eight dollars; for each car having more than twenty-five and not more than thirty-five horsepower, twelve dollars; and for each such car having more than thirty-five horsepower, twenty dollars.

If House Bill 44 enacted by this session of the General Assembly shall become a law, then for the calendar year 1926 and each calendar year thereafter, for each passenger car having twenty-five horsepower or less, four dollars; for each such car having more than twenty-five and not more than thirty-five horsepower, six dollars; for each such car having more than thirty-five horsepower, ten dollars.

G. C. Sec. 6292-1. Each owner of a commercial car trailer or semi-trailer, shall pay or cause to be paid, taxes as follows:

For each commercial car having motor power and for each trailer or semi-trailer, seventy cents per one hundred pounds or part thereof, for the first two thousand five hundred pounds or part thereof of weight of vehicle fully equipped; ninety cents per one hundred pounds for each one hundred pounds or part thereof in excess of two thousand five hundred pounds up to and including six thousand pounds; one dollar for each one hundred pounds or part thereof in excess of six thousand pounds up to and including nine thousand pounds; one dollar and fifteen cents for each one hundred pounds or part thereof in excess of nine thousand pounds.

The minimum tax for any vehicle motor power other than a motor bicycle or a motorcycle shall be eight dollars for the calendar year 1925, and four dollars for each year thereafter; and for each trailer or semi-trailer two dollars and fifty cents.

Each manufacturer or dealer shall pay or cause to be paid a tax of twenty dollars for each place of business in this state.

[fols. 52 & 53] Exhibit "D" to bill of exceptions omitted; printed side page 27 ante.

[fol. 54] Citation, in usual form, showing service on John W. Bricker, Filed December 8, 1925, omitted in printing.

[fol. 55] In United States District Court

[Title omitted]

Precipe for Transcript of Record—Filed December 8, 1925

It is hereby stipulated and agreed that the following portions from the record and proceedings shall constitute the entire record on appeal in this cause:

1. Bill of complaint of Benjamin H. Clark and Charles Riggs, a partnership doing business under the firm name of Clark and Riggs, filed August 7, 1925, and subpœna and returns thereon.

2. Temporary restraining order granted August 7, 1925 and return thereon.

2a. Entry continuing hearing, entered August 15th, 1925.

3. Entry continuing temporary restraining order to September 8, 1925, entered on September 5, 1925.

4. Answer of George T. Poor, C. C. Marshall and Frank B. Maullar, constituting the Public Utilities Commission of Ohio, filed September 8, 1925.

5. Entry continuing temporary restraining order until determination of application for interlocutory injunction, entered September 8, 1925.

6. Affidavit of Benjamin H. Clark, filed September 17, 1925.

7. Affidavit of Samuel Herndon, filed September 17, 1925.

7a. Affidavit of C. C. Marshall, George T. Poor, Frank B. Maullar.

[fol. 56] 8. Notice to Governor, Attorney General, etc., in regard to application for interlocutory injunction, and service thereon, filed September 21, 1925.

9. Opinion of Circuit Judge Donahue and District Judges Westenhaver and Hough, filed October 19, 1925.

10. Entry dismissing bill of complaint and dissolving preliminary restraining order, entered Dec. 8, 1925.

11. Petition for appeal and allowance of same.

12. Assignment of Errors.

13. Bond of appeal.

14. Bill of exceptions.

15. Citation on appeal and acknowledgment of service.

16. Praecipe.

17. Certificate of Clerk.

Signed at Columbus, Ohio, this 8th day of December, 1925.

Benjamin H. Clark and Charles Riggs, a partnership, Doing Business under the Firm Name of Clark and Riggs. Bettinger, Schmitt & Kreis, Paxton, Warrington & Seasongood, Murray Seasongood, their solicitors. George T. Poor, C. C. Marshall, and Frank B. Mauller, Constituting the Public Utilities Commission of the State of Ohio, by John W. Bricker, their Solicitors.

[fol. 57] Clerk's certificate to foregoing transcript omitted in printing.

[fols. 58 & 58a] Citation and service omitted; printed side page 54

[fol. 59] IN SUPREME COURT OF THE UNITED STATES

STATEMENT OF POINTS TO BE RELIED UPON AND DESIGNATION BY APPELLANTS OF PARTS OF THE RECORD TO BE PRINTED, WITH PROOF OF SERVICE—Filed February 1, 1926

Pursuant to the rules of practice of this Court, appellants file the following statement of the points on which they intend to rely:

1. The court erred in holding that the defendants, constituting the Public Utilities Commission of Ohio, have any jurisdiction over complainants, who are admittedly engaged solely in interstate commerce.

2. The court erred in holding that the defendants, constituting the Public Utilities Commission of Ohio, can require complainants to apply for and obtain a certificate of public convenience and necessity pursuant to the Ohio Motor Transportation Act (Secs. 614-84 to 614-102, inclusive, of the General Code of Ohio) as a condition of their right to operate automobile trucks, engaged and operating entirely in interstate commerce in the State of Ohio.

3. The court erred in holding that the tax imposed by the Ohio Motor Transportation Act (Sec. 614-94 of the General Code of Ohio) is valid as applied to complainants, who [fols. 60 & 61] are admittedly engaged solely in interstate commerce.

4. The court erred in holding that the tax imposed by the Ohio Motor Transportation Act (Sec. 614-94 of the General Code of Ohio) is valid as applied to complainants, who are admittedly common carriers engaged solely in interstate commerce, when said tax is not attempted to be applied to other persons using the roads of Ohio in the same manner and to the same extent as complainants, though not common carriers.

5. The court erred in dismissing complainants' bill of complaint.

6. The court erred in holding that complainants are without equity on the ground that complainants had not theretofore applied to the defendants, constituting the Public Utilities Commission of Ohio, for a certificate of public convenience and necessity.

7. The court erred in denying complainants' application for an injunction as prayed for in their bill of complaint.

8. The court erred in dissolving the temporary or preliminary restraining order theretofore granted and allowed.

9. The court erred in finding that the complainants were not entitled to the relief prayed for in their bill of complaint, for the reason, as found by the court, that the said complainants had filed no application with the defendants for a certificate of public convenience and necessity and had made no offer to comply with any of the provisions of the Ohio Motor Transportation Law, viz., Secs. 614-84 to 614-102, inclusive, of the General Code of Ohio.

Murray Seasongood, Solicitor for Appellants.

Columbus, Ohio, January 27, 1926.

Received copy of designation by appellants of points on which they intend to rely, and proof of service thereof is hereby acknowledged.

C. C. Crabbe, Atty. Gen., John W. Bricker, Solicitors for Appellees.

[fol. 62] Designation by Appellants of Parts of Record to be Printed

Pursuant to the rules of practice of this Court, appellants designate the following parts of the record to be printed:

1. Bill of complaint of Benjamin H. Clark and Charles Riggs, a partnership doing business under the firm name of Clark and Riggs, filed August 7, 1925, and subpœna and returns thereon.

2. Temporary restraining order granted August 7, 1925, and return thereon.

3. Entry continuing hearing, entered August 15, 1925.

4. Entry continuing temporary restraining order to September 8, 1925, entered on September 5, 1925.

5. Answer of George T. Poor, C. C. Marshall and Frank [fols. 63 & 64] B. Maullar, constituting the Public Utilities Commission of Ohio, filed September 8, 1925.

6. Entry continuing temporary restraining order until determination of application for interlocutory injunction, entered September 8, 1925.

7. Affidavit of Benjamin H. Clark, filed September 17, 1925.

8. Affidavit of Samuel Herndon, filed September 17, 1925.

9. Affidavit of C. C. Marshall, George T. Poor and Frank B. Maullar.

10. Notice to Governor, Attorney General, etc., in regard to application for interlocutory injunction, and service thereon, filed September 21, 1925.

11. Opinion of Circuit Judge Donahue and District Judges Westenhaver and Hough, filed October 19, 1925.

12. Entry dismissing bill of complaint and dissolving preliminary restraining order, entered December 8, 1925.

13. Petition for appeal and allowance of same.

14. Assignment of errors.

15. Bond on appeal.

16. Bill of exceptions.

17. Citation on appeal and acknowledgment of service.

18. Præcipe.

19. Certificate of Clerk.

Murray Seasongood, Solicitor for Appellants.

Columbus, Ohio, January 27, 1926.

Received copy of designation by appellants of parts of the record to be printed, and proof of service thereof is hereby acknowledged.

C. C. Crabbe, Atty. Gen., and John W. Bricker, Solicitors for Appellees.

[File endorsement omitted.]

Endorsed on cover: File No. 31,629. S. Ohio D. C. U. S. Term No. 986. Benjamin H. Clark and Charles Riggs, a partnership, doing business under the firm name of Clark and Riggs, appellants, vs. George T. Poor, C. C. Marshall, and Frank B. Maullar, constitution the Public Utilities Commission of Ohio. File January 22nd, 1926. File No. 31,629.

Supreme Court of the United States

OCTOBER TERM, 1925

BENJAMIN H. CLARK and CHARLES BIGGS, a Partnership doing business under the firm name of CLARK AND BIGGS,

Appellants,

v.

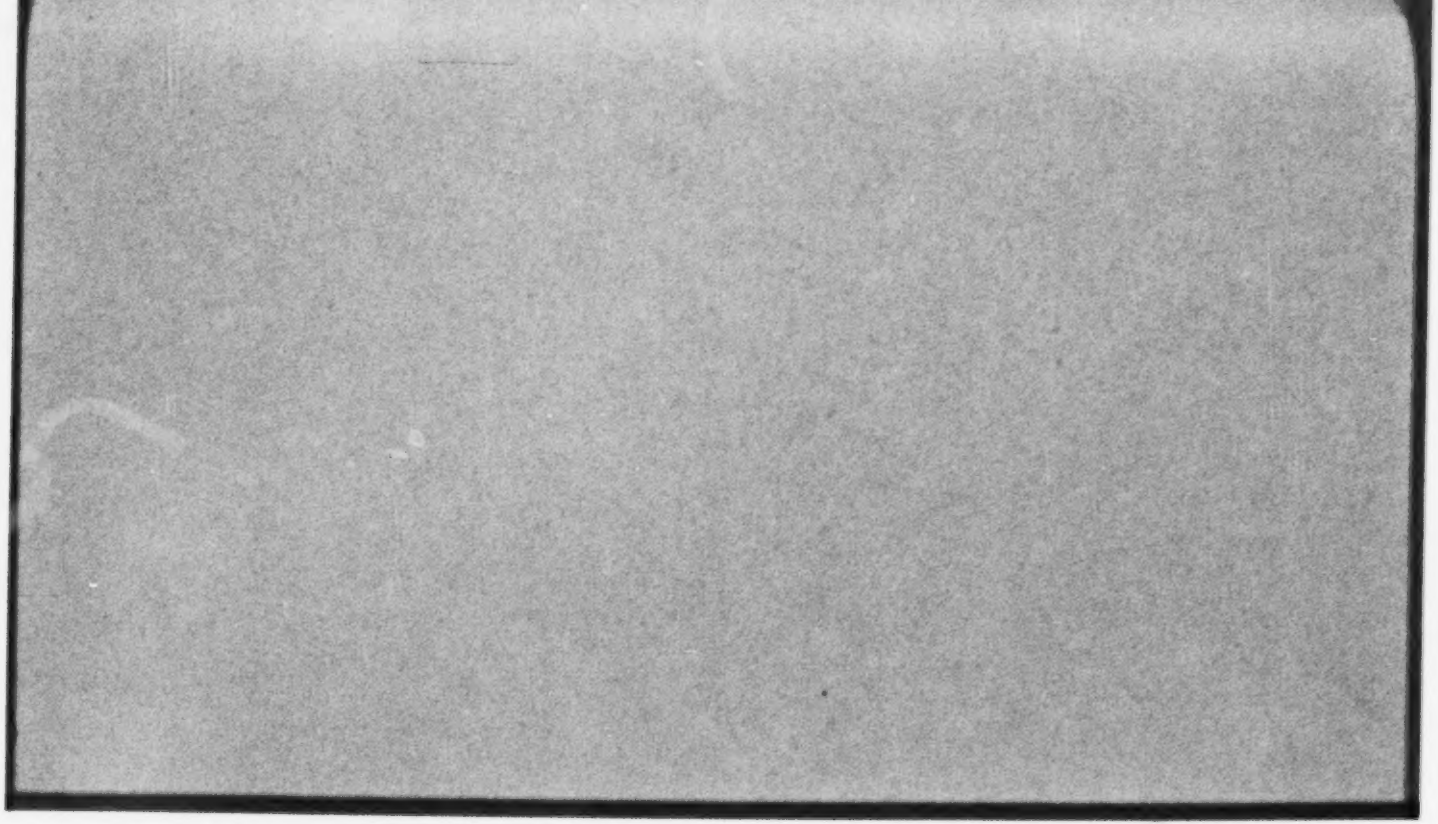
GEORGE T. POOR, C. C. MARSHALL, and FRANK B. MAULLAR, constituting THE PUBLIC UTILITIES COMMISSION OF OHIO,

Appellees.

BRIEF OF APPELLANTS.

LESTER A. JAFFA,
ROBERT P. GOLDMAN,
On the Brief.

MURRAY SEASONGOOD,
Solicitor for Appellants.



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No. 906

Supreme Court of the United States

OCTOBER TERM, 1925

BENJAMIN H. CLARK and CHARLES RIGGS, a Partnership doing business under the firm name of CLARK AND RIGGS,

Appellants,

v.

GEORGE T. POOR, C. C. MARSHALL, and FRANK B. MAULLAR, constituting THE PUBLIC UTILITIES COMMISSION OF OHIO,

Appellees.

BRIEF OF APPELLANTS

GROUNDS ON WHICH THE JURISDICTION OF THIS COURT IS INVOKED

The appeal in this case is from a decree of the District Court of the United States for the Southern District of Ohio, Eastern Division, dismissing appellants' petition and denying the injunction against the appellees prayed for therein (R. 23). This suit was brought to enjoin the appellees, defendants below, from enforcing against appellants, complainants below, the provisions of the Ohio Motor Transportation Act of 1923, as amended in 1925, being General Code of Ohio, Sections 614-84 to 614-102 inclusive

(quoted in full in the Record at pages 67 to 83 inclusive). It was heard before a court of three judges, Honorable Maurice H. Donahue, Circuit Judge, and Honorable Benson W. Hough and D. C. Westenhaver, District Judges, on an application for injunction pursuant to the provisions of the Act of Congress, June 8, 1910, chapter 309, Section 17, 36 Stat. 557, as amended by the Act of Congress of February 13, 1925, 43 Stat. 938 (Section 266 of the Judicial Code). Upon due notice to the Governor and the Attorney General of the State and appellees herein (R. 20), final hearing was had and a final decree denying permanent injunction in this cause and dismissing the bill was entered December 8, 1925 (R. 23). A direct appeal was thereupon taken to this court in accordance with the provisions of Section 266 of the Judicial Code (set forth in Appendix A of this brief).

STATEMENT OF THE CASE

The appellants are a partnership engaged in business as common carriers for hire of goods, wares and merchandise with their office and principal place of business at Aurora, Indiana. As a part of this business they own and operate several motor vehicles which they use in the transportation of goods, wares and merchandise of their customers, between Aurora, Indiana, and other cities and points in Indiana and Cincinnati, Ohio (R. 2, 12). *It is undisputed that appellants are not engaged in any intrastate business in Ohio* (R. 21). It is further undisputed that complainants have invested in their business a large amount of capital, employ a large number of persons and have paid all license fees required by the laws of the State of Indiana for the operation of their motor vehicles, and have received from the State of Indiana the necessary license tags to enable them to operate these motor vehicles upon the streets and highways of the State of Indiana (R. 2).

The legislature of the State of Ohio on March 29, 1923, passed an Act generally known as the Freeman-Collister Law, which became effective April 28, 1923. This Act and the amendments thereto are designated as Sections 614-84 to 614-102 inclusive of the General Code of Ohio (R. 67-83).

This Act, as amended, provides, among other things, that no motor transportation company shall operate any motor propelled vehicle for the transportation of persons or property or both, for hire, on any public highway in Ohio, except in accordance with the provisions of said Act (Section 614-85, R. 71); that no motor transportation company shall begin to operate any motor propelled vehicle for the transportation of persons or property or both, for hire, between fixed termini or over a regular or irregular routes in the State of Ohio without first obtaining from the Public Utilities Commission a certificate declaring that public convenience and necessity require such operation (Section 614-87, R. 72); that the Public Utilities Commission of the State of Ohio is vested with power and authority to supervise and regulate each such motor transportation company in Ohio, to fix, alter and regulate rates, to regulate the services and safety of operation of each such motor transportation company, to prescribe safety regulations and designate stops for services and safety on established routes, to require the filing of annual and other reports and of other data by such motor transportation companies, to provide uniform accounting systems and to supervise and regulate motor transportation companies in all matters affecting the relationship between such companies and the public (Section 614-86, R. 71); that said Commission shall adopt rules (Section 614-86, R. 71), prescribe the manner and form in which such motor transportation companies shall apply for the certificates of public convenience and necessity, and that among other rules adopted there shall be the following (Section 614-90, R. 75):

A. Application shall be made in writing on the blanks furnished by the Commission and shall show the principal office or place of business and residence of such motor transportation company.

B. Shall contain full information concerning the physical property used or to be used by the applicants.

C. The complete route over which the applicant operates or desires to operate, showing the number of miles of said route in each municipality and county.

D. The proposed time schedule or schedules or time cards of the applicant, if operating between fixed termini or over a regular route.

E. The schedule or tariff showing the passenger or freight rates to be charged between the several points, if operating between fixed termini or over a regular route.

This Act, as amended, further provides that said application shall contain other information, such as maps, showing the highway or highways and public places upon and over which such motor transportation company is to operate, and the number and kind of motor vehicles to be used (Section 614-91, R. 75); that the applicant shall give notice by publication in a newspaper, once a week for three consecutive weeks, of the fact that such an application has been filed and will be heard by said Commission (Section 614-91, R. 75); and that said Commission shall fix a date for the hearing of said application and give notice thereof to the applicant and all other motor transportation companies operating in the same territory (Section 614-92, R. 76).

This Act, as amended, further provides that such motor transportation company shall at the time of the issuance of such certificate of convenience and necessity, and annually thereafter, on or between January 1st and January 15th of each calendar year, pay to the Treasurer of the State of Ohio certain taxes "for the expense of the administration and enforcement of the provisions of Sections 614-84 to

614-102 of the General Code, and for the maintenance and repair of the highways of the State" (Section 614-94, R. 77), fifty (50%) per cent of which taxes are apportioned to the municipal corporations and counties into, through or along which the route of each such motor transportation company runs or extends, in accordance with the lineal miles of route in each, and the remaining fifty (50%) per cent shall belong to the State of Ohio and be paid into the State Treasury of the State Maintenance and Repair Fund (Section 614-95, R. 79), which fund is available for the use of appellees in defraying the expenses incident to maintaining the bureau of the department for carrying out and enforcing the provisions of said Sections 614-84 to 614-102, including the payment of salaries, traveling expenses, printing and other expenses and for the use of the director of highways and public works (Section 614-96 [2], R. 80).

This Act, as amended, further provides that no certificate of convenience and necessity shall be issued by the Commission to any motor transportation company until it shall have filed with the Commission a liability insurance policy or bond, satisfactory to the Commission, in such sum and with such other terms and provisions as the Commission may deem necessary adequately to protect the interests of the public having due regard for the number of persons and amount of property affected (Section 614-99, R. 81), which policy, policies or bonds shall insure the motor transportation company against loss sustained by reason of the death of or injury to persons and for loss of or damage to property resulting from the negligence of such motor transportation company, and shall have filed with the Commission a freight cargo insurance policy or bond adequately to protect the interests of the shipping public, which policy or bond shall insure the motor transportation company against all loss in excess of Fifty ($50.00) Dollars sustained

by reason of any loss or damage to the property being transported (Section 614-99, R. 81-82).

This Act, as amended, further provides that every officer, agent or employee of any corporation, and every other person who violates or fails to comply with or who procures, aids or abets in the violation of provisions of Sections 614-84 to 614-102, inclusive, of the General Code of Ohio, or who fails to obey, observe or comply with any order, decision, rule or regulation, direction, demand or requirement, or any part or provision thereof, of the Public Utilities Commission, or who procures, aids or abets any corporation or person in his failure to obey, observe or comply with any such order, decision, demand or regulation, or any part or provision thereof, shall be deemed guilty of a misdemeanor and, upon conviction, shall be punished by a fine not exceeding One Thousand ($1,000.00) Dollars, or by imprisonment in the county jail not exceeding one year, or by both such fine and imprisonment (Section 614-100, R. 82).

This Act, as amended, also provides that before granting any certificate the Commission shall take into consideration other existing transportation facilities in the territory for which a certificate is sought, and in case it appears from the evidence that the service furnished by existing transportation facilities is reasonably adequate the Commission shall not grant such certificate (Section 614-84, R. 73).

Again, the Act provides that the Commission may at any time for a good cause suspend and upon at last five days notice to the grantee of any certificate and an opportunity to be heard, revoke, alter or amend any certificate issued under the provisions thereof (R. 73).

Appellees sought to enforce certain of the provisions of said sections above referred to against appellants, doing in Ohio an interstate business exclusively, particularly those sections requiring the obtaining of a certificate of public

convenience and necessity, the payment of the taxes specified in General Code of Ohio, Section 614-94, and the indemnity bond specified in General Code of Ohio, Section 614-99, and appellees notified appellants that unless they complied with said sections and first obtained a certificate of public convenience and necessity, paid the said taxes and gave such indemnity bond, the appellees would cause their vehicles to be stopped on the highways in the State of Ohio and their drivers to be arrested and the prescribed penalties to be imposed upon them (R. 6, 13, 14, 16, 17). The answer of the appellees filed in this cause admitted that they, "acting as The Public Utilities Commission of Ohio, are undertaking to enforce the provisions of the motor transporation law of Ohio" (R. 11). Vehicles of appellants, engaged in business in Ohio in interstate commerce exclusively, were stopped on the public highways of the State, their drivers arrested and criminal prosecutions instituted against them, thus causing irreparable loss to appellants (R. 13, 17).

Appellants made no application to appellees for a certificate of public convenience and necessity. Appellees, by their affidavits (R. 18, 19), assert that if application were made by appellants to the Public Utilities Commission of Ohio for such a certificate, and if payment were made of the taxes on each vehicle, as provided by Section 614-94, and insurance policies or indemnity bond furnished, as provided by Section 614-99, and if there should be compliance with other police regulations and orders of the Commission as is required of intrastate haulers, such certificate would be granted.

The court, in its opinion (R. 20-23), held as to appellants and the facts of this case, that the provisions of the Ohio Motor Transportation Act relating to liability and cargo insurance requirements are unreasonable and invalid (R. 22), that the taxes imposed by said Act (Section 614-94) do

not constitute a burden on interstate commerce and such taxes are, therefore, valid and that appellants must first apply to The Public Utilities Commission of Ohio for a certificate of public convenience and necessity before they can operate in interstate commerce in Ohio (R. 22).

The assignment of errors intended to be urged (R. 25, 26; R. 86, 87), briefly summarized, are:

1. The court erred in holding that appellees can require appellants to apply for and obtain a certificate of public convenience and necessity as a condition of their right to operate automobile trucks, engaged in operating entirely in interstate commerce in the State of Ohio, and in holding that appellants are without equity on the ground that they had not theretofore applied to appellees for such a certificate.

2. The court erred in holding that the tax imposed by General Code of Ohio, Section 614-94, is valid, as applied to appellants, who are admittedly common carriers engaged solely in interstate commerce in Ohio, when such a tax is not attempted to be applied to others using the roads of Ohio in the same manner and to the same extent as appellants, though not common carriers.

3. The court erred in denying appellants' application for an injunction and in dismissing their bill of complaint.

ARGUMENT.

Appellees, the Public Utilities Commission of Ohio, Are Without Legal Power to Require Appellants First to Apply For and Obtain a Certificate of Public Convenience and Necessity as a Condition Precedent to Engaging Solely in Interstate Commerce in Ohio.

Decisions of this Court are numerous to the effect that a state can not make its permission, or the granting of

a certificate or license, a condition precedent to engaging solely in interstate commerce.

In *Crutcher* v. *Kentucky*, 141 U. S. 47, this Court said:

> "It has frequently been laid down by this court that the power of Congress over interstate commerce is as absolute as it is over foreign commerce. Would any one pretend that a state legislature could prohibit a foreign corporation,—an English or a French transportation company, for example,—from coming into its borders and landing goods and passengers at its wharves, and soliciting goods and passengers for a return voyage, without first obtaining a license from some state officer, and filing a sworn statement as to the amount of its capital stock paid in? And why not? Evidently because the matter is not within the province of state legislation, but within that of national legislation. * * * As was said by Mr. Justice Lamar * * * 'It is well settled by numerous decisions of this court, that a state can not under the guise of a license tax, exclude from its jurisdiction a foreign corporation engaged in interstate commerce, or impose any burdens upon such commerce within its limits.'
>
> "We have repeatedly decided that a state law is unconstitutional and void which requires a party to take out a license for carrying on interstate commerce, no matter how specious the pretext may be for imposing it." Citing cases (at pages 57, 58).

General Code of Ohio, Section 614-90 (R. 75), provides that The Public Utilities Commission of Ohio shall adopt rules and prescribe the manner and form in which motor transportation companies shall apply for certificates of public convenience and necessity. The statute further requires legal notice by way of newspaper advertising, before any hearing can be had (Section 614-91, R. 75). In view of the principles announced by this Court in the *Crutcher* Case and

affirmed in numerous decisions thereafter (see *infra*), can it be urged that appellants, concededly engaged in Ohio solely in interstate commerce, can be required so to apply and obtain a certificate before being permitted to carry on such interstate commerce business?

In *Buck v. Kuykendall*, 267 U. S. 307, the right of the State of Washington to regulate common carriers for hire and to prohibit the use of highways by auto vehicles over regular routes, without first obtaining a certificate of public convenience and necessity, was considered by this Court.

Buck, a citizen of Washington, wished to operate an automobile stage line as a common carrier for hire exclusively for through interstate passengers and express, over the Pacific Highway between Seattle, Washington, and Portland, Oregon. He obtained from Oregon the license prescribed by its laws. Having complied with the laws of Washington relating to motor vehicles, and alleging his willingness to comply with all applicable regulations, Buck nevertheless was denied a certificate of public convenience and necessity. He thereupon brought an action to enjoin interference by the State officials with the operation of the projected line.

This Court, in reversing the three judge court below, said:

> "The provision here in question is of a different character. Its primary purpose is not regulation with a view to safety or to conservation of the highways, but the prohibition of competition. It determines not the manner of use, but the persons by whom the highways may be used. It prohibits such use to some persons while permitting it to others for the same purpose and in the same manner. Moreover, it determines whether the prohibition shall be applied by resort, through state officials, to a test which is peculiarly

within the province of federal action—the existence of adequate facilities for conducting interstate commerce. The vice of the legislation is dramatically exposed by the fact that the State of Oregon had issued its certificate which may be deemed equivalent to a legislative declaration that, despite existing facilities, public convenience and necessity required the establishment by Buck of the auto stage line between Seattle and Portland. Thus, the provision of the Washington statute is a regulation, not of the use of its own highways, but of interstate commerce. Its effect upon such commerce is not merely to burden but to obstruct it. Such state action is forbidden by the Commerce Clause." (Pages 315, 316.)

In a note in 39 Harvard Law Review 900, this case is cited as authority for the proposition that a State can not require a certificate of convenience and necessity of a motor vehicle operating for hire exclusively in interstate commerce.

Again, in *Bush Co.* v. *Maloy*, 267 U. S. 317, a Maryland statute prohibiting common carriers of merchandise or freight by motor vehicle from using public highways over specified routes without a permit was considered by this Court, and the statute was held unconstitutional as applied to one desirous of using the highways as a common carrier in exclusively interstate commerce. This Court, in reversing a judgment of the Court of Appeals of Maryland dismissing a bill for injunction, said:

"The state action in the *Buck* Case was held to be unconstitutional, not because the statute prescribed an arbitrary test for the granting of permits, or because the Director of Public Works had exercised the power conferred arbitrarily or unreasonably, but because the statute as construed and applied invaded a field reserved by the Commerce Clause for federal regulation." (At pages 324, 325.)

It is contended by appellees that the case at bar is distinguishable, on the ground that appellants did not apply for such certificate of public convenience and necessity and that had they so applied such certificate would have been granted.

In this connection, we invite the attention of the Court to the affidavit of the appellees filed herein (R. 18 and 19) that such certificate would be granted only upon "• • • the filing of insurance papers, the payment of the tax prescribed by the law, and complying with other police regulations and orders of the Commission the same as intrastate haulers," by appellants. We shall consider subsequently in this brief the legal right of appellees to compel the payment of the tax and compliance with other provisions of the State Motor Transportation Law as a condition of obtaining a certificate to engage in interstate commerce in Ohio. We further contend, however, that The Public Utilities Commission of Ohio has no right to require an application for such a certificate or the issuance of such a certificate as a condition of so engaging in interstate commerce in that state.

The contention of appellees, as set forth in their affidavit filed in this cause (R. 18, 19), that appellants must not only file insurance papers and pay the tax but also comply with other police regulations and orders of the Commission, as is required of intrastate haulers, is vague and indefinite, since there is nothing in the record to show which sections of the Ohio Motor Transportation Act are considered by the appellees as constituting purely police regulations and orders. The same can also be said of their contention that they "• • • have never attempted to apply to the motor transportation companies any uniform system of accounting or any other section of the Public Utilities law which would be inapplicable or impracticable if so

applied" (R. 19). This is clearly a legal conclusion. What sections would be inapplicable or impracticable as applied to interstate common carriers? Again, appellants merely say that they *have never attempted* to apply such sections and do not allege that they will not do so in the future. Even the latter allegation would not prevent appellees or any subsequent members of the Public Utilities Commission of Ohio from changing their minds.

Moreover, the issues in this case clearly show that appellees would not grant a certificate of public convenience and necessity in any event unless appellants had complied with the insurance and tax provisions of the Ohio Motor Transportation Act. The court below concedes that the requirement of the insurance provisions as to appellants is unreasonable and invalid (R. 22). Yet the court was of the opinion that appellants were without equity because they had not filed an application and had not offered to comply with the provisions of the Ohio statute, when at least one of these provisions was held invalid and unlawful. Had appellants filed such an application and offered to comply with the law, they might have been placed in the position of having waived their rights to complain or being estopped from claiming the invalidity of any of the provisions of the act.

True, the court, in its opinion (R. 22), says that "• • • this court can not now assume that defendants should refuse such a certificate with requirements limited in accordance with the views expressed herein and in opinion in the Red Ball Transit Co. case," but whether the appellants should have first applied for a certificate of public convenience and necessity should be determined by the issues as disclosed by the pleadings and not on the basis of a possible future situation which might result because of a statement in the opinion.

In the *Bush* Case, the suit was brought in Maryland to restrain state officials "from interfering with such use of the company's trucks." The plaintiff maintained that, *regardless of permit*, it was entitled to use the highways as a common carrier in exclusively interstate commerce. The affirmance of this decree by the highest court of Maryland was reversed. (See page 324.) This Court did not enjoin the state officials from refusing to issue a certificate of public convenience and necessity, but enjoined interference with the complainant's vehicles. Thus, it would seem that the Bush Company was permitted to operate in interstate commerce wholly without regard to the state statutory requirements as to application and issuance of a certificate.

Likewise, in the *Buck* Case, an injunction prayed for and granted by this Court was against interference by State officials with the operation of the projected line of complainant. The Court did not require Buck to apply for and obtain a certificate of public convenience and necessity before operation in interstate commerce on the highways of the State, nor did the Court enjoin the State Director of Public Works, defendant in that case, from refusing to grant the certificate. As in the Bush case, interference with complainant's vehicles was enjoined without the requirement of such a certificate.

The Public Utilities Commission of Ohio Can Not Require the Payment of the License Tax Mentioned in General Code of Ohio, Section 614-94

If the state can not regulate interstate commerce, it follows that it can not require the payment of a license or a franchise tax for the privilege of engaging in interstate commerce. As recently as the case of *Real Silk Hosiery Mills* v. *Portland*, 268 U. S. 325, this Court held invalid,

as to persons taking orders to be filled by interstate shipments of goods, a municipal ordinance requiring the payment of a license fee of every person who goes from place to place taking orders for goods for future delivery, on the ground that such ordinance constituted an unconstitutional interference with interstate commerce. The Court stated:

> "Considering former opinions of this court we can not doubt that the ordinance materially burdens interstate commerce and conflicts with the Commerce Clause. *Robbins* v. *Shelby Taxing District*, 120 U. S. 489, 497; *Brennan* v. *Titusville*, 153 U. S. 289; *Rearick* v. *Pennsylvania*, 203 U. S. 507; *Crenshaw* v. *Arkansas*, 227 U. S. 389; *Texas Transport Co.* v. *New Orleans*, 264 U. S. 150; *Alpha Portland Cement Co.* v. *Commonwealth of Massachusetts*, 268 U. S. 203." (Page 335.)

In *Texas Transport & Terminal Co.* v. *New Orleans*, 264 U. S. 150, a state license tax which was sought to be laid upon the business of a corporation employed as agent of owners of vessels engaged exclusively in interstate and foreign commerce was held unconstitutional and in contravention of the Commerce Clause of the Constitution of the United States and an interference with and tax upon interstate commerce.

In *Sault Ste. Marie* v. *International Transit Co.*, 234 U. S. 333, this Court affirmed an order granting an injunction against a municipality requiring a license and tax for ferry boats engaged in interstate commerce on the ground that this was a burden on interstate commerce and beyond the powers of the state. The Court further held that a state can not make its consent a condition precedent to engaging in interstate commerce nor demand a price for such consent.

In *Adams Express Co.* v. *New York*, 232 U. S. 14, the validity, as applied to interstate commerce, of an ordinance

which prohibited the exercise of the business of expressmen except under an annual license granted by the Mayor and revocable by him was considered by this Court. It was said that if the provisions of the ordinance

> "* * * be deemed to require that a license must be obtained as a condition precedent to conducting the interstate business of an express company, we are of the opinion that so construed they would be clearly unconstitutional. It is insisted that, under the authority of the State, the ordinances were adopted in the exercise of the police power. But that does not justify the imposition of a direct burden upon interstate commerce. Undoubtedly, the exertion of the power essential to assure needed protection to the community may extend incidentally to the operations of a carrier in its interstate business, provided it does not subject that business to unreasonable demands and is not opposed to Federal legislation. *Smith* v. *Alabama*, 124 U. S. 465; *Hennington* v. *Georgia*, 163 U. S. 299; *N. Y., N. H. & H. R. R. Co.* v. *New York*, 165 U. S. 628; *Lake Shore & M. S. Ry. Co.* v. *Ohio*, 173 U. S. 285. It must, however, be confined to matters which are appropriately of local concern. It must proceed upon the recognition of the right secured by the Federal Constitution. Local police regulations can not go so far as to deny the right to engage in interstate commerce, or to treat it as a local privilege and prohibit its exercise in the absence of a local license," and

citing *Crutcher* v. *Kentucky*, to the effect that

> "* * * a state law is unconstitutional and void which requires a party to take out a license for carrying on interstate commerce, no matter how specious the pretext may be for imposing it."

The Court below, on the authority of the case of *Michigan Public Utilities Company* v. *Duke*, 266 U. S. 570, held that the provision of the state statute requiring all carriers to take out certain liability or cargo insurance as a

condition of engaging in business as a common carrier was invalid as applied to interstate carriers (R. 22). The court, however, on the authority of *Red Ball Transit Co. v. Marshall*, 8 Fed. (2d) 635, decided the same day by the same court as the case at bar, was of the opinion that the tax required by General Code of Ohio, Section 614-94, is not invalid as applied to a motor transportation company engaged in interstate commerce. An examination of the decision in the *Red Ball* case shows that the court relied upon *Liberty Highway Co. v. Michigan Public Utilities Commission*, 294 Fed. 703, and on *Hendrick v. Maryland*, 235 U. S. 610. So far as the *Liberty Highway Company* case is concerned, the opinion of the three judge court therein (of which Circuit Judge Donahue was also a member) in turn shows reliance on *Interstate Motor Transit Co. v. Kaykendall*, 284 Fed. 882, which case was exactly parallel in facts and decision to the *Buck v. Klykendall* case in 295 Fed. 197. This latter case was reversed by the Supreme Court of the United States in 267 U. S. 307.

The statute considered in *Hendrick v. Maryland*, 235 U. S. 610, is in no wise parallel to the statute in this case. In the *Hendrick* case, the court was called upon to consider the validity of a graduated license fee imposed on *all vehicles* using the highways of the state, whether common carriers engaged in interstate commerce or intrastate commerce, whether private carriers or vehicles not carriers at all, but rather private pleasure cars. In fact, the *Hendrick* case involved the operation of a private passenger car. This Court held that such a license fee was not an undue burden on interstate commerce and that a state, in the exercise of its police power, could require "* * * rightfully prescribed uniform regulations necessary for public safety and order in respect to the operation upon its highways *of all motor vehicles* * * *." (Italics ours.) The

tax mentioned in General Code of Ohio, Section 614-94 (R. 77) is in no wise similar to such a license fee as was considered in the *Hendrick* case. General Code of Ohio, Sections 6292 and 6292-1 (R. 83), imposes a license fee, similar to the one involved in the *Hendrick* case, on all vehicles including pleasure cars as well as commercial cars, carriers as well as non-carriers (R. 83). No contention is made by appellants that such a license tax would be invalid, but no such license fee is attempted to be collected in Ohio. In fact, appellees paid such a license tax to the State of Indiana and obtained the usual license tags that are issued after payment of such tax.

The taxes prescribed by General Code of Ohio, Sections 6292 and 6292-1, are for the purpose of maintaining the highways of the State, as is evident from General Code of Ohio, Section 6291, which reads as follows:

> "Application of annual license tax. An annual license tax is hereby levied upon the operation of motor vehicles on the public roads or highways of this state, for the purpose of enforcing and paying the expense of administering the law relative to the registration and operation of such vehicles and of maintaining and repairing public roads, highways and streets. Such tax shall be at the rates specified in this chapter and shall be paid to and collected by the deputy commissioner, at the time of making application for registration as herein provided, and in cases where such deputy commissioner is not county auditor, such monies shall be paid to the county auditor."

This tax is levied upon all motor vehicles and upon payment thereof the owner is entitled to operate his vehicle over any of the highways of the state.

On the other hand, the tax imposed by General Code of Ohio, Section 614-94, is not required to be paid by pleasure

vehicles nor is it required to be paid by any commercial car, not a common carrier. *Hissem* v. *Guram*, 112 O. S. 59. In *Michigan Public Utilities Commission* v. *Duke*, *supra*, this Court held that a state can not, by legislative fiat, convert a private carrier into a common carrier and subject it to the payment of such taxes. Thus, it would seem that interstate common carriers are required, as a condition precedent to engaging in interstate business in Ohio, to pay a very large tax *in addition to the usual graduated license tax required of all vehicles*, even though private carriers and all pleasure and other commercial cars not operating as carriers at all do not have to pay such tax.

Again, not only is the tax imposed by General Code of Ohio, Section 614-94, not levied for the purpose of the upkeep of the highways of the State, but such tax bears no reasonable relation to the use of the highways. If appellants are required first to obtain a certificate of public convenience and necessity, they will be able to operate only along the definite route and between the fixed termini and on regular schedules as to time specified in the application and the certificate. Appellants' operation is chiefly in Indiana and their vehicles come into the State only as far as Cincinnati and probably do not travel more than twenty-five miles on Ohio's highways altogether. On the other hand, a similar operation from Cincinnati to Cleveland, for example, which would cover hundreds of miles of the highways of the State, and would require the payment of no greater tax than appellees seek to impose on appellants for the privilege of engaging in interstate commerce in Ohio.

The tax imposed by General Code of Ohio, Section 614-94, is a direct burden on interstate commerce. Appellees require payment thereof as a prerequisite to engaging in Ohio solely in interstate commerce. It is a tax which is not required of any other motor vehicles, regardless of their use

of the highways of the state, except common carriers and, hence, it can not, in any view of the case, be considered a tax levied for the purpose of regulating and maintaining the highways of the state. Indeed, the Ohio Motor Transportation Act, in express terms, does not apply to private contract carriers, nor even to all common carriers such as taxicabs or sightseeing buses (General Code of Ohio, Section 614-84 [a], R. 70). In other words, the Ohio Motor Transportation Act, as interpreted and applied by appellees, requires the payment of burdensome taxes by certain classes of common carriers, not required of any other motor vehicles. These taxes are in addition to the license taxes required of all vehicles by General Code of Ohio, Section 6292, as is apparent from the express provisions of Section 614-98 (R. 81). Whether the State of Ohio can require the payment of such additional taxes as a condition of motor transportation companies engaging in intrastate commerce in that state is not in question. That the State of Ohio can require the payment of such additional taxes as a condition of motor transportation companies engaging in Ohio solely in interstate commerce, we emphatically deny.

The purpose of the Ohio Motor Transportation Act, by its express terms, is to regulate motor vehicles engaged as common carriers. It is in no sense simply a license tax law, the purpose of which is to register vehicles, in the interest of public safety, and to use the funds derived from such license fees for the maintenance of the highways of the state, such as General Code of Ohio, Section 6292-1. Both by its express terms and as interpreted by the Supreme Court of Ohio, the Ohio Motor Transportation Act is a regulatory measure and the additional taxes imposed thereby are just elements of the regulation. The act itself, 110 Ohio Laws 211, is called, "An act * * * conferring jurisdiction upon The Public Utilities Commission over the

transportation of persons or property for hire in motor vehicles and providing for the supervision and regulation of such jurisdiction. * * *"

The amendment in 111 Ohio Laws 512, styles the act one, "providing for the supervision and regulation of motor transportation." In contrast is the original act which includes what is now known as General Code of Ohio, Section 6292. This act (99 Ohio Laws 538) is styled one "* * * to provide for the registration, identification and regulation of motor vehicles."

The Supreme Court of Ohio in *Hissem* v. *Guram, supra,* held that the Ohio Motor Transportation Act applied to common carriers of the kind mentioned therein and was not intended to and could not apply to any other motor vehicles and that if it were so applied it would be clearly unconstitutional. *Michigan Public Utilities Commission* v. *Duke, supra,* is to the same effect. This strengthens the conclusion that the Ohio Motor Transportation Act is in no sense a general license tax law for the registration of motor vehicles generally, such as was permitted in the *Hendrick* case, but that, on the contrary, it is a measure for the regulation of common carriers. Moreover, the taxes imposed by this regulating measure are not levied merely for the maintenance of the highways of the state, but by the express language thereof (Section 614-96 [2], R. 80), the "State Maintenance and Repair Fund" is available for the use of appellees in defraying the expenses incident to maintaining the bureau of the department for carrying out the Motor Transportation Act, including the payment of salaries, traveling expenses, printing and other expenses. These expenses are incurred by reason of appellees performing the duties of regulating intrastate commerce as required by the act and which is the bulk of their work. It seems clear, therefore, that the tax sought to be imposed

under General Code of Ohio, Section 614-94, does not come within the rule of the *Hendrick* case and *Kane* v. *New Jersey*, 242 U. S. 160, a similar case, but rather is of the kind prohibited by the rule of the *Adams Express Company* case, 232 U. S. 14, heretofore considered.

The *Adams Express Company* case is decisive of the issues in the case at bar. In that case an ordinance of the city of New York prohibited, under a penalty, any person from carrying on certain named businesses, including express business, without a license. There were further provisions requiring the giving of a bond, schedule of rates, provisions as to inspection, etc. The license charges were fixed at a certain rate per express wagon and per driver. The municipal authorities attempted to apply the ordinance to the Adams Express Company, ninety-eight (98%) per cent of the business of which in New York City consisted of transportation of property in interstate commerce. This Court, in granting an injunction restraining the enforcement of the ordinance with respect to the interstate business of the express company, held that the license fee provided by the ordinance "can not be regarded as imposing a fee, or tax, for the use of the streets; if they were such, the question would at once arise as to the validity of the discrimination involved in such an exaction. Nor can they be considered as a regulation in the interest of safety and street traffic. Other ordinances provide for the 'rules of the road' to which wagons of express companies, as well as those of other persons, are subject (p. 32) * * * The sections now under consideration constitute a regulation of the express 'business' (p. 32). * * * While such a requirement may be proper in the case of local or intrastate business, it can not be justified as a prerequisite to the conduct of the business that is interstate (p. 32). * * * It would seem to follow, necessarily, that the annual license fee * * * can not be exacted, so far as the interstate business is con-

cerned. * * * The sums fixed 'for each express wagon' and 'for each driver' measure the amount to be exacted for the granting of the license required for the carrying on of the business. And it is difficult to see how the payment can be enforced as to the interstate business if the taking out of the license therefor can not be compelled" (pp. 32-33).

Likewise, in the case at bar, the payment of additional taxes provided by the Ohio Motor Transportation Act, is a condition to obtaining a license to engage in Ohio in interstate commerce. Similarly, the Ohio statute seeks to regulate the business of common carriers by motor vehicle and in general such statute contains similar provisions.

In the case of *Commonwealth v. O'Neil*, 233 Mass. 537, 124 N. E. 482, the *Adams Express Company* case was compared with the *Hendrick* and *Kane* cases in considering the application to vehicles engaged in interstate commerce of a municipal ordinance prohibiting the driving of motor vehicles for the transportation of persons, within the city, without a license. The ordinance further enjoined upon the board of aldermen various duties of regulation, including the collection of license fees. Chief Justice Rugg, in delivering the opinion of the court, held that the ordinance fell within the rule of the *Adams Express Company* case and that the *Hendrick* and *Kane* cases were not applicable, saying that "arguments that that ordinance might be upheld as imposing a fee for the use of streets, as based upon the nature of the business, or as inspection charges, were summarily disposed of as inapposite or inadequate." The court held that such an ordinance could not be constitutionally applied to interstate commerce.

CONCLUSION.

We contend that appellants, concededly engaged in Ohio solely in interstate commerce, have the right to conduct

such business without first applying for and obtaining a certificate of public convenience and necessity from The Public Utilities Commission of the state; that appellees, constituting that Commission, can not make the obtaining of such license a condition precedent to engaging in interstate commerce; and that the additional taxes imposed by General Code of Ohio, Section 614 94, are direct burdens on interstate commerce and can not be exacted from appellants as a prerequisite to their carrying on interstate commerce. We urge, therefore, that the decree of the court below be reversed and that appellees be enjoined from interfering in any manner with appellants' motor vehicles when engaged in Ohio in interstate commerce.

Respectfully submitted,

Lester A. Jaffe,
Robert P. Goldman,
On the Brief.

Murray Seasongood,
Solicitor for Appellants.

APPENDIX A.

Act of Congress of February 13, 1925, c. 229, Sec. 1, 43 Stat. 938 (Sec. 266 of the Judicial Code)—

No interlocutory injunction suspending or restraining the enforcement, operation, or execution of any statute of a state by restraining the action of any officer of such state in the enforcement or execution of such statute, or in the enforcement or execution of an order made by an administrative board or commission acting under and pursuant to the statutes of such state, shall be issued or granted by any justice of the Supreme Court, or by any District Court of the United States, or by any judge thereof, or by any circuit judge acting as district judge, upon the ground of the unconstitutionality of such statute, unless the application for the same shall be presented to a justice of the Supreme Court of the United States, or to a circuit or district judge, and shall be heard and determined by three judges, of whom at least one shall be a justice of the Supreme Court or a circuit judge, and the other two may be either circuit or district judges, and unless a majority of said three judges shall concur in granting such application. Whenever such application as aforesaid is presented to a justice of the Supreme Court, or to a judge, he shall immediately call to his assistance to hear and determine the application two other judges: Provided, however, That one of such three judges shall be a justice of the Supreme Court or a circuit judge. Said application shall not be heard or determined before at least five days' notice of the hearing has been given to the governor and to the attorney general of the state, and to such other persons as may be defendants in the suit: Provided, That if of opinion that irreparable loss or damage would result to the complainant unless a temporary restraining order is granted, any justice of the Supreme Court, or any circuit or district judge, may grant such temporary restraining order at any time before such hearing and determination of the application for an interlocutory injunction, but such temporary restraining order shall remain in force only

until the hearing and determination of the application for an interlocutory injunction upon notice as aforesaid. The hearing upon such application for an interlocutory injunction shall be given precedence and shall be in every way expediated and be assigned for a hearing at the earliest practicable day after the expiration of the notice hereinbefore provided for. An appeal may be taken direct to the Supreme Court of the United States from the order granting or denying, after notice and hearing, an interlocutory injunction in such case. It is further provided that if before the final hearing of such application a suit shall have been brought in a court of the state having jurisdiction thereof under the laws of such state, to enforce such statute or order, accompanied by a stay in such state court of proceedings under such statute or order pending the determination of such suit by such state court, all proceedings in any court of the United States to restrain the execution of such statute or order shall be stayed pending the final determination of such suit in the courts of the state. Such stay may be vacated upon proof made after hearing, and notice of ten days served upon the attorney general of the state, that the suit in the state courts is not being prosecuted with diligence and good faith. The requirement respecting the presence of three judges shall also apply to the final hearing in such suit in the District Court; and a direct appeal to the Supreme Court may be taken from a final decree granting or denying a permanent injunction in such suit.

APPENDIX B

General Code of Ohio, Sec. 614-84. Defining "motor transportation." (a) The term "motor transportation company," when used in this chapter, means every corporation, company, association, joint stock association, person, firm or co-partnership, their lessees, trustees, receivers or trustees appointed by any court whatsoever, owning, controlling, operating or managing any motor propelled vehicle not usually operated on or over rails, used in the business of transportation of persons or property, or both, as a common carrier, for hire, under private contract or for the public

in general, over any public highway in this state; provided, however, that the term "motor transportation company" as used in this chapter shall not include any private contract carrier, as defined in section 614-2, and shall not include any person or persons, firm or firms, co-partnership or voluntary association, joint stock association, company or corporation, wherever organized or incorporated, in so far as they own, control, operate or manage a motor vehicle or motor vehicles used for the transportation of persons or property, or both, and which are operated exclusively within the territorial limits of a municipal corporation, or within such limits and the territorial limits of municipal corporations immediately contiguous thereto, or in so far as they own, control, operate or manage taxicabs, hotel busses, school busses or sightseeing busses, or in so far as they own, control, operate or manage motor propelled vehicles, the use of which is for the private business of the owners and the use of which for hire is casual and disassociated from such private business.

Defining "public highway." (b) The term "public highway," when used in this chapter, means any public street, road or highway in this state, whether within or without the corporate limits of a municipality.

(Defining "termini and routes.") (c) The words "fixed termini" when used in this chapter shall be understood to refer to the points between which any motor transportation company usually, or ordinarily operates or manages any motor propelled vehicle, and the words "regular route" shall be understood to refer to that portion of the public highway over which any motor transportation company usually, or ordinarily operates or manages any motor propelled vehicle. The words "irregular route," shall be understood to refer to that portion of the public highway over which is conducted any other operation of any motor propelled vehicle by a motor transportation company. Whether or not any motor propelled vehicle is operated by such motor transportation company, between fixed termini or over a regular route or irregular route within the meaning of this chapter, or whether or not the operator or carrier is engaged as a motor transportation company or a private

contract carrier, shall be questions of fact and the finding of the commission thereon shall be a final order which may be reviewed as provided in section 614-89 of the General Code.

Complaints; hearing. And the commission is given jurisdiction to receive, hear and determine any complaint that may be filed in good faith against any private contract carrier that it has ceased to be such and has become a common carrier. Upon such complaint being filed the commission shall set the date for hearing which shall be not less than fifteen days after the filing of the complaint. Upon the date set the commission shall conduct a hearing and if it shall find that the private contract carrier complained against has ceased to be such, such carrier shall become subject to the provisions of this chapter applicable to a motor transportation company, and the commission may proceed in like manner upon its own initiative.

Sec. 614-85. (Motor transportation subject to this chapter.) No motor transportation company, its lessees, trustees, receivers or trustees appointed by any court whatsoever, shall operate any motor propelled vehicle for the transportation of persons or property, or both, for hire, on any public highway in this state except in accordance with the provisions of this chapter.

Sec. 614-86. (Powers of Commission.) The public utilities commission of the state of Ohio is hereby vested with power and authority to supervise and regulate each such motor transportation company in this state to fix, alter and regulate rates; to regulate the service and safety of operation of each such motor transportation company; to prescribe safety regulations, and designate stops for service and safety on established routes; to require the filing of annual and other reports and of other data by such motor transportation companies; to provide uniform accounting systems; and to supervise and regulate motor transportation companies in all other matters affecting the relationship between such companies and the public to the exclusion of all local authorities in this state, except as hereinafter otherwise provided. The commission, in the exercise of the juris-

diction conferred upon it by this chapter, shall have the power and authority to presribe rules and regulations affecting such motor transportation companies, notwithstanding the provisions of any ordinance, resolution, license or permit enacted, adopted or granted by any incorporated city or village, city and county, or county, and in case of conflict between any such ordinance, resolution, license or permit, the order, rule or regulation of the public utilities commission shall, in each instance prevail:

(Local regulations.) Provided that such local subdivisions may make reasonable local police regulations within their respective boundaries not inconsistent with the provisions of this chapter; provided, further, that no motor transportation company operating under a certificate of convenience and necessity, shall carry persons whose complete ride is wholly within the territorial limits of a municipal corporation, or within such limits and the territorial limits of municipal corporations immediately contiguous thereto, except with the consent of such municipal corporation or municipal corporations.

Sec. 614 87. Certificate of public convenience and necessity. No motor transportation company shall begin to operate any motor propelled vehicle for the transportation of persons or property, or both, for hire, between fixed termini or over a regular or irregular route in this state, without first obtaining from the public utilities commission a certificate declaring that public convenience and necessity require such operation.

(Granting of certificate.) The commission shall have the power, after notice and hearing, when the applicant requests a certificate to operate in a territory already served by a motor transpotation company holding a certificate of public convenience and necessity from the commission, to grant a certificate only when the existing motor transportation company or companies serving such territory do not provide the service required or the particular kind of equipment necessary to furnish such service to the satisfaction of the commission, and in all other cases, with or without hearing, to issue such certificates as prayed for, or to refuse to

issue the same, or to issue them for the partial exercise only of the privileges sought, or to issue such certificates for the use of certain kinds of equipment and for the handling of certain kinds of material or merchandise over such routes, and may attach to the exercise of the rights granted by such certificates, such terms and conditions as, in its judgment, the public convenience and necessity may require.

(Affidavit of existing motor transportation company.) Where a motor transportation company has been actually operating in good faith upon the date of filing the original act in the office of the secretary of state, April twenty-eight, nineteen hundred twenty three, it shall file with the commission an affidavit showing its principal place of business, full information concerning the physical property, the route over which it has been operating, the schedule or schedules, together with a map of its route, showing the number of miles of route in each municipality and county into, through or along which such route runs or extends, a statement that it has been actually operating over such route or routes in good faith, together with the liability insurance policy or policies required under section 614-99 of the General Code, and thereupon a certificate of public convenience and necessity shall issue, if the commission shall find the statements in said affidavit to be true. But no certificates shall be granted upon any such affidavit unless the same shall have been filed prior to the passage of this act.

Payment of fee. Upon the payment of the fee provided under section 614-94 of the General Code to the commission, such motor transportation company may continue to operate and shall be governed in all respects as if such motor transportation company had made a written application.

(Refusal of Certificate.) Before granting any certificate the commission shall take into consideration other existing transportation facilities in the territory for which a certificate is sought, and in case it appears from the evidence that the service furnished by existing transportation facilities is reasonably adequate the commission shall not grant such certificate.

Suspension and revocation. The commission may at any time for a good cause suspend, and upon at least five days'

notice to the grantee of any certificate and an opportunity to be heard, revoke, alter or amend any certificate issued under the provisions of this chapter.

On finding of the public utilities commission that any motor transportation company does not give convenient and necessary service in accordance with the order of such commission such motor transportation company shall be given a reasonable time, not less than sixty days, to provide such service before any existing certificate is cancelled or a new one granted over the route mentioned in the finding and order of or hearing before the public utilities commission.

Sec. 614 87a. (Death of operator; effect of.) Upon the death of a person operating as a motor transportation company under a certificate of public convenience and necessity, his personal representative or representatives may operate under such certificate while the same remains in force and effect, and, with the consent of the commission may transfer such certificate.

(Dissolution of partnership.) Upon the dissolution of a partnership operating as a motor transportation company under a certificate of public convenience and necessity, caused by death or otherwise, in the event the surviving or remaining partner or partners acquire the assets of the partnership, the partner or partners so acquiring such assets may continue to operate under such certificate while the same remains in force and effect, and with the consent of the commission, may transfer such certificate; upon the dissolution of a partnership operating a motor transportation company under a certificate of public convenience and necessity, caused by death, in the event the surviving partner or partners do not acquire the assets of the partnership, then such surviving partner or partners and the personal representative or representatives of the deceased partner or partners may transfer such certificate with the consent of the commission.

(Transfer of Certificate.) In all other cases a certificate of public convenience and necessity shall not be transferred except with the consent of the commission, after a public hearing had thereon.

Sec. 614-88. Consent to operate must be first secured. Except as provided in section 614-84, no corporation or person, their lessees, trustees, receivers or trustees appointed by any court whatsoever, shall operate any automobile, jitney, bus, truck, state, auto stage, or rent for hire car, for the transportation of persons or property or both, for compensation, over any public street, road or highway in this state between fixed termini or over a regular or irregular route, over which any motor transportation company is operating under a certificate of convenience and necessity issued by the commission as provided in this act, until such corporation or person, their lessees, trustees, receivers or trustees appointed by any court whatsoever, shall have secured a certificate of public convenience and necessity or permission from the commission to so operate, and then only in strict accordance with such rules as the commission may prescribe for such operation.

Sec. 614-89. Applications and complaints made and filed with commission. In all respects in which the public utilities commission has power or authority under this act (G. C. Secs. 614-2, 614-84 to 614-102, and 6292), applications and complaints may be made and filed with such commission, processes issued, hearings held, opinions, orders and decisions made and filed, petitions for re hearings filed and acted upon, and all proceedings before the supreme court of this state considered and disposed of by such court in the manner, under the conditions and subject to the limitations and with the effect specified in the sections of the General Code governing the supervision of other public utilities by the commission.

Sec. 614-90. Rules governing application for certificates of public convenience and necessity. The commission shall adopt rules prescribing the manner and form in which such motor transportation companies as defined in this act (G. C. Secs. 614-2, 614-84 to 614-102 and 6292) shall apply for the certificates of public convenience and necessity. Among other rules adopted there shall be the following:

(a) Application shall be made in writing on the blanks furnished by the commission and shall show the principal

office or place of business and residence of such motor transportation company.

(b) Shall contain full information concerning the physical property used or to be used by the applicant.

(c) The complete route over which the applicant operates or desires to operate, showing the number of miles of said route in each municipality and county.

(d) The proposed time schedule or schedules or time cards of the applicant, if operating between fixed termini or over a regular route.

(e) The schedule or tariff showing the passenger or freight rates to be charged between the several points, if operating between fixed termini or over a regular route.

Sec. 614 91. (Application shall contain map of route.) Such application shall contain a map, showing the highway or highways and public places upon and over which such motor transportation company is to operate, and the number and kind of motor vehicles to be used in carrying on the business of such motor transportation company.

(Notice of filing.) The applicant shall give notice of the filing of such application by publication made once a week for three weeks immediately prior to the day set for said hearing, in a newspaper of general circulation published at the county seat of each county in or through which the applicant proposes to operate, or in one newspaper published in and of general circulation throughout the territory in or through which the applicant proposes to operate. Such published notice shall state the fact that such application has been made, the route proposed to be operated, the number of motor vehicles to be used, the number of trips to be made daily, and the name and address of the applicant. Upon application for a certificate to operate between fixed termini or over a regular route, the commission shall give written notice of the filing of such application to all motor transportation companies, street railroads, interurban railroads and steam railroads operating in the territory through which the applicant proposes to operate.

Date for hearing. The commission shall after the filing of such application, fix a date for hearing upon the same,

unless the commission in its discretion deems such hearing unnecessary and the best interests of the public require that said application be granted or rejected without such hearing. When a date for the hearing is fixed the commission shall give the applicant, all other motor transportation companies, street railroads, interurban railroads and steam railroads operating in the territory through which the applicant proposes to operate at least ten days' notice of such hearing.

(Amending application.) The applicant shall have the right, either before or after hearing or action by the commission to amend, modify or alter such application by filing with the commission an amendment to such application or a supplemental application which shall in turn be considered by the commission and be governed in the same manner as is provided in case of an original application.

Sec. 614-92. Operation restricted to specified routes. Except as otherwise expressly provided, it shall be unlawful for any motor transportation company as defined in this act (G. C. Secs. 614-2, 614-84 to 614-102 and 6292) to operate in this state on any route, other than the route provided for in the certificate granted by the commission; or to fail or refuse to operate on the whole of the route, in the manner and at the time specified in the certificate; except in case of emergency due to the act of God or unavoidable accident or casualty or the route becoming impassable, or in case it becomes necessary to make temporary detours; and it shall be unlawful for any such motor transportation company to neglect or refuse to comply with and obey any and all regulations and orders of the commission and other statutory laws and regulations of the state of Ohio governing and applying to such motor vehicles, provided, however, that nothing in this act shall prohibit a motor transportation company as defined hereunder and not operating between fixed termini from making casual trips over routes established hereunder.

Sec. 614-93. New application may be filed. Any motor transportation company as defined in this chapter (G. C. Secs. 487 to 614-102) may, at any time after a certificate

is granted or refused, file a new application or supplement any former application, for the purpose of changing, extending or shortening the route, or increasing or decreasing the number of vehicles or for the doing of any other act or thing which the applicant might be permitted to do under the general statutory laws and regulations of the state of Ohio.

Sec. 614-94. Taxes paid to treasurer of state. Every motor transportation company now operating or which shall hereafter operate in this state shall at the time of the issuance of such certificate, and annually thereafter on or between January 1st and January 15th of each calendar year, pay to the treasurer of state the following taxes for the expense of the administration and enforcement of the provisions of sections 614-84 to 614-102 of the General Code, and for the maintenance and repair of the highways of the state; all taxes levied upon the issuance of a certificate to any motor transportation company shall be reckoned as from the beginning of the quarter in which such certificate is issued.

Rates. For each motor propelled vehicle operating between fixed termini or over a regular route, carrying seven passengers or less, forty dollars; for each such motor propelled vehicle carrying more than seven but not more than twelve passengers, ninety dollars; for each such motor propelled vehicle carrying more than twelve but not more than eighteen passengers, one hundred and forty dollars; for each such motor propelled vehicle carrying more than eighteen but not more than twenty-four passengers, one hundred and eighty dollars; and for each such motor propelled vehicle carrying more than twenty four passengers, two hundred and thirty dollars.

For each motor propelled vehicle not operating between fixed termini or over a regular route, carrying seven passengers or less, twenty dollars; for each such motor propelled vehicle carrying more than seven but not more than twelve passengers, fifty dollars; for each such motor propelled vehicle carrying more than twelve but not more than eighteen passengers, ninety dollars; for each such motor pro-

pelled vehicle carrying more than eighteen but not more than twenty-four passengers, one hundred and fifteen dollars; and for each such motor propelled vehicle carrying more than twenty-four passengers, one hundred and fifty dollars.

For each motor propelled vehicle used for transporting property between fixed termini or over a regular route the manufacturer's rated carrying capacity of which is one and three-fourths tons or less, forty dollars; for each such motor propelled vehicle the manufacturer's rated carrying capacity of which is more than one and three-fourths tons but not more than two and one-half tons, eighty dollars; for each such motor propelled vehicle the manufacturer's rated carrying capacity of which is more than two and one-half but not more than three and one-half tons, one hundred and forty dollars; and for each such motor propelled vehicle the manufacturer's rated carrying capacity of which is more than three and one-half tons, two hundred dollars.

For each motor propelled vehicle used for transporting property not between fixed termini or over a regular route the manufacturer's rated carrying capacity of which is one and three-fourths tons or less, twenty dollars; for each such motor propelled vehicle the manufacturer's rated carrying capacity of which is more than one and three-fourths but not more than two and one-half tons, fifty dollars; for each such motor propelled vehicle the manufacturer's rated carrying capacity of which is more than two and one-half but not more than three and one-half tons, one hundred dollars; and for each such motor propelled vehicle the manufacturer's rated carrying capacity of which is more than three and one-half tons, one hundred and fifty dollars.

For each motor propelled vehicle used by any such company for transporting both persons and property simultaneously the tax shall be computed on the basis of either tonnage or passenger capacity and the basis which yields the greater revenue shall apply.

Trailer. A trailer used by a motor transportation company hereunder shall be taxed at a rate equal to twenty per cent of that levied upon the vehicle by which it is drawn.

In case of emergency, or unusual temporary demands for transportation, the taxes for additonal motor propelled vehicles for limited periods shall be fixed by the commission in such reasonable amounts as may be prescribed by general rule or temporary order.

Sec. 614-94a. (Operation over irregular route.) When any motor transportation company holds a certificate for operation between fixed termini or over a regular route and also holds a certificate for operation over an irregular route, such motor transportation company may operate over such irregular route and in such irregular service any motor propelled vehicle upon which the tax for operation over a regular route has been paid as required by the provisions of this chapter without the further payment of the tax required of motor propelled vehicles operating over irregular routes.

Sec. 614-95. Division of tax. The treasurer of state shall open an account with each municipal corporation and county into, through or along which the route of each such motor transportation company runs or extends, and shall apportion fifty per cent of the taxes imposed by section 614-94 in accordance with the lineal miles of route in each municipal corporation and county. The remaining fifty per cent of such taxes shall belong to the state of Ohio and shall be paid into the state treasury to the credit of the state maintenance and repair fund.

Duties of treasurer of state with regard to taxes. The treasurer of state shall be the custodian of such funds and shall disburse the same in the manner provided in section 614-96 of the General Code. The treasurer of state is hereby authorized to deposit any portion of the funds due municipal corporations and counties into, through or along which the route runs of extends, not needed for immediate distribution, in the same manner and subject to all the provisions of law with respect to the deposit of active state funds by such treasurer; and all interest earned by such funds so deposited shall be collected by him and placed in the state treasury to the credit of the "state maintenance and repair fund." On the first business day of each month, the auditor

of state on the requisition of the treasurer of state shall draw and transmit to the auditor of each county a warrant on the treasurer of state for the amount of the tax collections apportioned to the municipal corporations and counties into, through or along the route of such motor transportation company runs and extends, accompanying the same with a statement showing the distribution of the amount represented thereby to each such municipal corporation or county. The county auditor shall certify the amount so transmitted into the county treasury to be disposed of as herein provided.

Sec. 614-96. Distribution of revenue. The revenue collected under the provisions of section 614-94 of the General Code shall be distributed as follows:

(1) Fifty per centum of all taxes collected under section 614-94 of the General Code shall be for the use of the municipal corporations or counties into, through and along which the route of such motor transportation company runs and extends. Such moneys shall be paid into the treasury of the proper county as provided herein and the proper portions distributed to the municipal corporations in accordance with the miles of route in such municipal corporation. In the treasuries of such municipal corporations and counties, such money shall constitute a fund which shall be used for the maintenance and repair of public roads, highways and streets and for no other purpose, and shall not be subject to transfer to any other fund. "Maintenance and repair" as used in this section includes all work done upon any public road or highway or upon any street, in which the existing foundation thereof is used as the subsurface of the improvement thereof, in whole or in substantial part.

(2) The "state maintenance and repair fund" shall be available for the use of the public utilities commission of Ohio in defraying the expenses incident to maintaining the bureau of the department for carrying out and enforcing the provisions of sections 614-84 to 614-102, inclusive, of the General Code, including the payment of salaries, traveling expenses, printing and other expenses, and for the use of the director of highways and public works in the manner

provided by law. The General Assembly shall make appropriations therefrom for such purpose.

Sec. 614-97. Qualifications of chauffeur or driver. It shall be unlawful for any motor transportation company as defined in this chapter (G. C. Secs. 487 to 614-102) to cause, allow or permit any motor propelled vehicle operated by it as a motor transportation company to be driven by any person under the age of twenty-one years; and such person shall be an American citizen and shall be skilled in the art of driving such public motor vehicles, and without physical disabilities or personal habits which would disqualify him or make him an unsuitable person to serve as driver of such public motor vehicle.

For the purpose of determining the qualifications of such chauffeur or driver, the secretary of state shall be governed by section 6302 of the General Code, in so far as the same may be applicable.

Examination and license of drivers. Upon the issuance of the certificate to drive, the applicant shall pay the registration fee and no further fee shall be charged or examination required by the state or any local authorities in the state. The term "local authorities" as used herein means all officers, boards and commissions of counties, cities, villages or townships. In case of sickness, accident or other emergency, any other licensed driver may be substituted.

Sec. 614-98. Fees, charges, etc. The fees and charges provided under section 614-94 of the General Code shall be in addition to taxes, fees and charges fixed and exacted by other provisions of the general laws of Ohio; except the assessments required by section 606 of the General Code, but all fees, license fees, annual payments, license tax, or taxes or other money exactions, except the general property tax, assessed, charged, fixed or exacted by local authorities, such as municipalities, townships, counties, or other local boards, or the officers of such subdivisions shall be deemed to be illegal and be superseded by this act (G. C. Secs. 614-2, 614-84 to 614-102 and 6292). On such motor transportation company complying with the provisions of this act, all local ordinances, resolutions, by laws and rules in force shall

cease to be operative as to them, except that such local subdivisions may make reasonable local police regulations within their respective boundaries not inconsistent with the provisions of this act.

Sec. 614-99. (Bond of operator; terms.) No certificate of convenience and necessity shall be issued by the commission to any motor transportation company until such motor transportation company shall have filed with the commission a liability insurance policy or bond satisfactory to the commission in such sum and with such other terms and provisions as the commission may deem necessary adequately to protect the interests of the public having due regard for the number of persons and amount of property affected, which policy, policies or bonds shall insure the motor transportation company against loss sustained by reason of the death of or injuries to persons and for loss of or damage to property resulting from the negligence of such motor transportation company, and shall have filed with the commission a freight cargo insurance policy or bond adequately to protect the interests of the shipping public, which policy or bond shall insure the motor transportation company against all loss in excess of fifty dollars sustained by reason of any loss or damage to the property being transported.

Further provisions. Such policy or bond shall further provide that ten days' notice in writing shall be given to the public utilities commission of intention to cancel such policy of insurance.

(Replacing bond.) If such policy or bond is cancelled during the term thereof or in event the same should lapse for any reason, the commission shall require such motor transportation company to replace such policy or bond with another fully complying with the requirements of this section, and in default thereof the certificate shall be deemed revoked.

Sec. 614-100. Penalty for violation. Every officer, agent or employe of any corporation, and every other person who violates or fails to comply with or who procures, aids or abets in the violation of any provision of sections 614-84 to 614-102, inclusive, of the General Code, or who fails to obey, observe or comply with any order, decision, rule or

regulation, direction, demand or requirement, or any part or provision thereof, of the public utilities commission, or who procures, aids or abets any corporation or person in his failure to obey, observe or comply with any such order, decision, demand or regulation, or any part or provision thereof, shall be deemed guilty of a misdemeanor and, upon conviction, shall be punished by a fine not exceeding one thousand dollars, or by imprisonment in the county jail not exceeding one year, or by both such fine and imprisonment.

Sec. 614-101. (Intrastate commerce only.) Neither sections 614-84 to 614-102, inclusive, of the General Code, nor any provisions thereof, shall apply or be construed to apply to commerce with foreign nations or countries, or among the several states of this Union, except in so far as the same may be permitted under the provisions of the constitution of the United States and the acts of congress.

Sec. 614-102. Each section and part thereof independent. Each section of this act (G. C. Secs. 614-2, 614-84 to 614-102 and 6292), and every part thereof, is hereby declared to be independent sections and parts of sections, and the holding of any section of part thereof to be void or ineffective for any cause shall not affect any other section or part thereof.

Sec. 6291. Application of annual license tax. An annual license tax is hereby levied upon the operation of motor vehicles on the public roads or highways of this state, for the purpose of enforcing and paying the expense of administering the law relative to the registration and operation of such vehicles and of maintaining and repairing public roads, highways and streets. Such tax shall be at the rates specified in this chapter and shall be paid to and collected by the deputy commissioner, at the time of making application for registration as herein provided, and in cases where such deputy commissioner is not county auditor, such monies shall be paid to the county auditor.

Sec. 6292. (Schedule of rates.) Each owner of a motor bicycle, motorcycle or passenger car shall pay or cause to be paid taxes as follows:

For each motor bicycle or motorcycle, two dollars and fifty cents; and for each side car, one dollar and fifty cents.

For the calendar year 1925 and if House Bill 44 enacted by this section of the General Assembly shall not have become a law, for each calendar year thereafter, for each passenger car having twenty-five horse-power or less, eight dollars; for each such car having more than twenty-five and not more than thirty-five horsepower, twelve dollars; and for each such car having more than thirty-five horsepower, twenty dollars.

If House Bill 44, enacted by this session of the General Assembly, shall become a law, then for the calendar year 1926 and each calendar year thereafter, for each passenger car having twenty-five horsepower or less, four dollars; for each such car having more than twenty-five and not more than thirty-five horsepower, six dollars; for each such car having more than thirty-five horsepower, ten dollars.

Sec 6292-1. (Schedule of rates continued.) Each owner of a commercial car, trailer or semi-trailer, shall pay or cause to be paid taxes as follows:

For each commercial car having motor power and for each trailer or semi-trailer, seventy cents per one hundred pounds or part thereof, for the first two thousand five hundred pounds or part thereof of weight of vehicle fully equipped; ninety cents per one hundred pounds for each one hundred pounds or part thereof in excess of two thousand five hundred pounds up to and including six thousand pounds; one dollar for each one hundred pounds or part thereof in excess of six thousand pounds up to and including nine thousand pounds; one dollar and fifteen cents for each one hundred pounds or part thereof in excess of nine thousand pounds.

Minimum tax. The minimum tax for any vehicle having motor power other than a motor bicycle or motorcycle shall be eight dollars for the calendar year 1925, and four dollars for each year thereafter; and for each trailer or semi-trailer two dollars and fifty cents.

Each manufacturer or dealer shall pay or cause to be paid a tax of twenty dollars for each place of business in this state.

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No. 275

Supreme Court of the United States

OCTOBER TERM, 1926

BENJAMIN H. CLARK and CHARLES RIGGS, a Partnership doing business under the firm name of CLARK AND RIGGS,

Appellants,

v.

GEORGE T. POOR, C. C. MARSHALL, and FRANK B. MAULLAR, constituting THE PUBLIC UTILITIES COMMISSION OF OHIO,

Appellees.

REPLY BRIEF OF APPELLANTS.

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On the Brief.

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REPLY BRIEF OF APPELLANTS

Appellees contend (Br. 6) that appellants have not been molested and that their drivers have not been arrested pursuant to any act of appellees, since the inspectors are appointed by the Ohio Director of Commerce. It should be sufficient answer to this argument merely to refer to the answer of appellees filed in this cause wherein they admit that they, "acting as the Public Utilities Commission of Ohio, are undertaking to enforce the provisions of the Motor Transportation Law of Ohio" (R. 11).

Again, appellees argue that appellants have an adequate remedy at law since, assuming they are not subject to the provisions of the Ohio Motor Transportation Law, they, and their drivers and employees, would have a defense against any charges or prosecutions. It is familiar law that when prevention of criminal prosecutions under an unconstitutional statute is essential to protect property rights, equitable jurisdiction exists to restrain such prosecutions. *Hygrade Provision Co. v. Sherman*, 266 U. S. 497, 500, 45 Sup. Ct. 141; *Packard v. Banton*, 264 U. S. 140, 44 Sup. Ct. 257; *Terrace v. Thompson*, 263 U. S. 197, 214, 44 Sup. Ct. 15; *Truax v. Raich*, 239 U. S. 33, 37. It is in evidence that appellants have a business which has a value in excess of $15,000, without including the value of the good will and trade which by their efforts they have been able to build up, and that the loss and injury to them incident to the enforcement of the Ohio Motor Transportation Law as alleged in their bill of complaint would be irreparable (R. 13).

In the brief for appellees, the statement is made that appellees have held that they must, upon application, grant an interstate certificate (Br. 4). Even if appellees had any right to require appellants first to apply for and obtain a certificate of public convenience and necessity as a condition precedent to engaging solely in interstate commerce in Ohio, which we deny, the record is undisputed that appellees would not grant such an interstate certificate upon application unless payment were made of the taxes on each vehicle, as provided by Section 614-94, and insurance policies or indemnity bond furnished, as provided by Section 614-89, and compliance with other regulations and orders of the commission as is required of intrastate haulers (R. 18-19).

The court below held as to appellants and the facts of this case that the provisions of the Ohio Motor Transporta-

tion Act with reference to insurance policies or indemnity bond are unreasonable and invalid (R. 22), and we contend, further, that the taxes imposed by said Act (Section 614-94) constitute a direct burden on interstate commerce and are, therefore, likewise invalid.

This Court has held that no certificate of public convenience and necessity is required as a condition precedent to engaging solely in interstate commerce. *Buck* v. *Kuykendall*, 267 U. S. 307, 45 Sup. Ct. 324; *Bush Co.* v. *Maloy*, 267 U. S. 317, 45 Sup. Ct. 326; *Crutcher* v. *Kentucky*, 141 U. S. 47. Although these cases hold that no certificate is required for interstate transportation, counsel for appellees make no attempt to discuss them or to show their non-applicability to the case at bar.

Since the brief for appellants was filed in this cause, the case of *Interstate Busses Corporation* v. *Holcomb*, 47 Sup. Ct. 298, was decided by this Court on January 3, 1927. Mr. Justice Butler, in the course of his opinion, said:

> "No licenses from local authorities or certificate of public convenience and necessity is required in respect of transportation that is exclusively interstate. Cf. *Buck* v. *Kuykendall*, 267 U. S. 307, 45 S. Ct. 324, 69 L. ed. 623, 38 A. L. R. 286; *Bush Co.* v. *Maloy*, 267 U. S. 317, 45 S. Ct. 326, 327, 69 L. ed. 627."

It follows, therefore, under the decisions of this Court, that the appellees are without legal power to require appellants first to apply for and obtain a certificate of public convenience and necessity. Moreover, appellees attached conditions to the granting of a certificate which conditions are in contravention of the "commerce clause" of the Constitution of the United States.

Appellees urge, with reference to the taxes required by the Ohio Motor Transportation Law, that "similar taxes have been sustained by this court," citing *Hendrick* v. *Mary*

land, 235 U. S. 610; *Kane v. New Jersey*, 242 U. S. 160 (Br. 5). These cases have been thoroughly considered in appellants' brief and the obvious differences clearly pointed out between the taxes involved in those cases and the taxes sought to be imposed by the statute under consideration in the case at bar.

The case of *Cannon Ball Transportation Company v. Public Utilities Commission of Ohio*, 113 O. S. 565, 149 N. E. 713, cited by appellees, held in effect that where a certificate of public convenience and necessity had been granted to an interstate carrier, the Public Utilities Commission could prohibit such carrier from receiving passengers in Ohio whose destinations are also within the state, that is, from doing an intrastate business under the guise of an interstate operation. The specific question as to whether the commission could require a common carrier, doing an interstate business exclusively, to obtain a certificate of public convenience and necessity as a condition precedent to engaging in such business was not considered or decided. The court merely held that the state authorities could compel interstate common carriers to comply with reasonable safety requirements and obey other regulations "which would not impose an unreasonable burden upon interstate commerce" (page 572). Whether the conditions attached by appellees to the granting of a certificate to an interstate common carrier are an unreasonable burden upon interstate commerce, and whether the taxes sought to be imposed by the Ohio Motor Transportation Law sustain any reasonable relation to the use of the highways of the state by interstate common carriers was not discussed.

CONCLUSION

We urge, therefore, that the appellees, constituting the Public Utilities Commission of the State of Ohio, can not

make the obtaining of a certificate of public convenience and necessity a condition precedent to engaging solely in interstate commerce; that no such certificate can be required in respect of transportation that is exclusively interstate; that the additional taxes imposed by *General Code of Ohio*, Section 614-94, are direct burdens on interstate commerce and appellants should not be required to pay them for the privilege of carrying on interstate commerce in Ohio; and that appellees should be enjoined from interfering in any manner with appellants' motor vehicles when engaged in Ohio solely in interstate commerce.

Respectfully submitted,

LESTER A. JAFFE,
On the Brief.

MURRAY SEASONGOOD,
Solicitor for Appellants.

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IN THE

Supreme Court of the United States

No. 275

October Term, 1926.

BENJAMIN H. CLARK AND CHARLES RIGGS, A PARTNERSHIP DOING BUSINESS UNDER THE FIRM NAME OF CLARK AND RIGGS,

Appellants,

vs.

GEORGE T. POOR, C. C. MARSHALL, AND FRANK B. MAULLAR, CONSTITUTING THE PUBLIC UTILITIES COMMISSION OF OHIO,

Appellees.

BRIEF OF APPELLEES.

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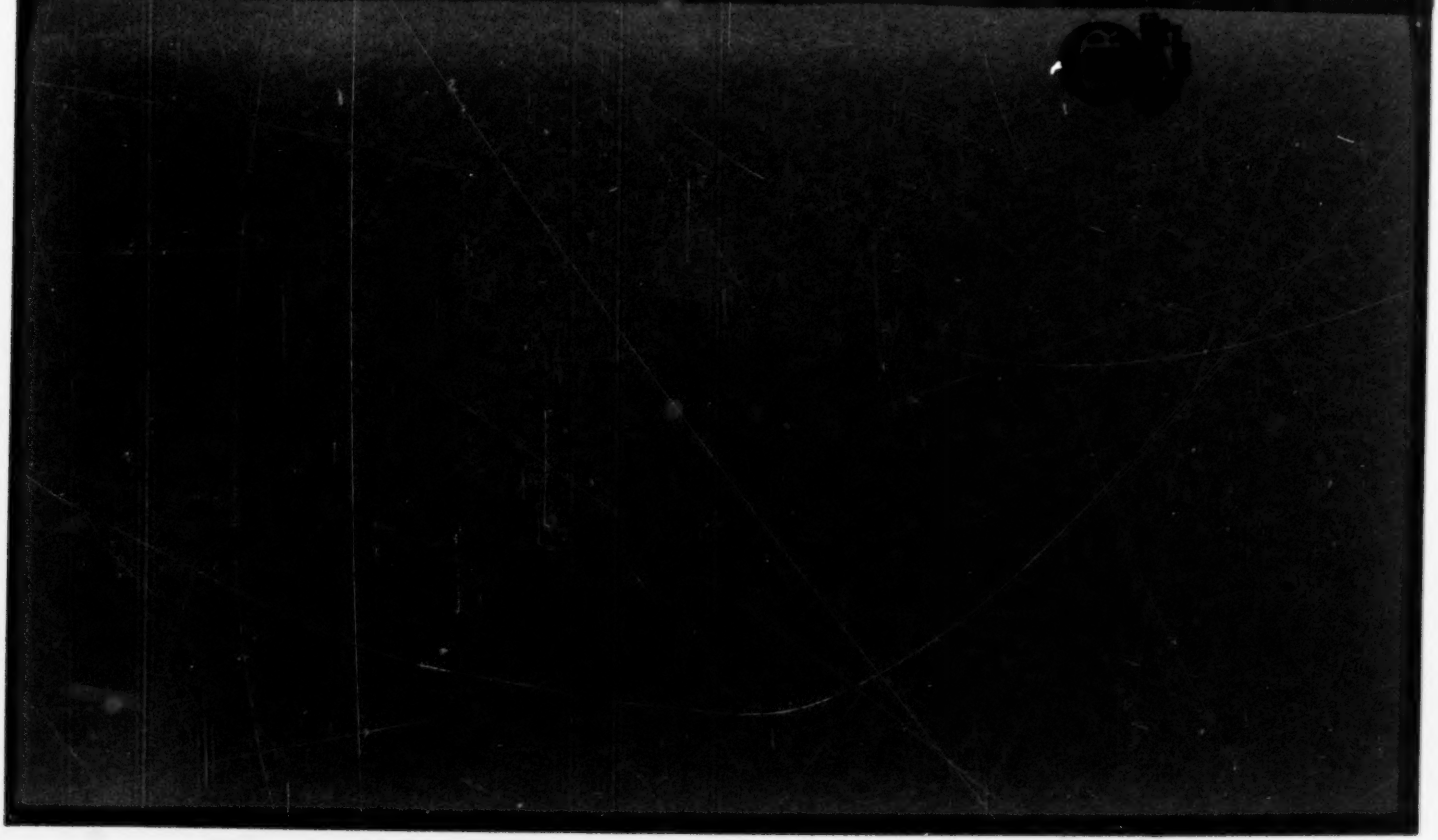

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IN THE

Supreme Court of the United States

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Appellants,

vs.

GEORGE T. POOR, C. C. MARSHALL, AND FRANK B. MAULLAR, CONSTITUTING THE PUBLIC UTILITIES COMMISSION OF OHIO,

Appellees.

BRIEF OF APPELLEES.

This case is before the Supreme Court on an appeal from a decree of the District Court of the United States for the Southern District of Ohio, Eastern Division, wherein the petition of the appellants was dismissed and an injunction refused.

The appellants in their petition, (R., p. 1) sought to enjoin the appellees from enforcing the motor transportation law of Ohio as against the appellants, also attempting to enjoin the appellees and any of their agents or employees from stopping, or causing to be stopped, or aiding others to stop the motor vehicles of the appellants while transporting goods in interstate commerce over the highways of Ohio, and from arresting or causing to be arrested any of the drivers or employees of the appellants or from instituting any prosecutions against the appellants or any of their employees.

In the opinion (R., p. 20) a three judge court found the appellants not entitled to the equitable relief which they sought.

STATEMENT OF FACTS.

Clark and Riggs, appellants, are a partnership admittedly hauling property as a motor transportation company (G. C. 614-2, G. C. 614-84) between Cincinnati, Ohio, and points in Indiana.

The appellees are the members of the Public Utilities Commission of Ohio charged with the administration of the motor transportation law of Ohio (R., p. 67-83).

The law provides among other things for the issuance upon application of certificates of convenience by the Public Utilities Commission of Ohio. The Public Utilities Commission has held that it has no discretion in granting a certificate to haul as a common carrier in interstate commerce but upon application and compliance with other requirements of the law must grant such

a certificate. Other provisions of the law require compliance with certain safety regulations in regard to headlights, extra tires, speedometer and adequate brakes; other sections require qualified drivers and reasonable speed limits. The Public Utilities Commission is given authority to make other safety regulations.

Clark and Riggs made no application to the Public Utilities Commission for a certificate, and did not offer to comply with the regulatory sections of the law.

The motor transportation law of Ohio also provides in Section 614-94 (R., p. 77) for a tax upon each motor vehicle used as a common carrier of persons or property, which tax, after expenses of administration of the law are paid, is used for the maintenance and repair of the highways of the state.

The appellants made no offer to pay this tax, and herein object to paying the same.

ARGUMENT.

Section 614-102 (R., p. 83) of the motor transportation law makes every section of that law independent and if any part or section is void or ineffective the remainder is enforceable. If the Public Utilities Commission of Ohio has no discretion in granting a certificate for interstate transportation, such does not invalidate the remainder of the law, particularly the tax sections. The appellees have held that they must upon application grant an interstate certificate upon application.

Buck v. Kuykendall, 267 U. S., 307.
Bush v. Maloy, 267 U. S., 317.

The Ohio commission likewise as a formal part of the administration of the valid and applicable sections of the law has granted interstate certificates.

Cannonball Transportation Co. v. The Public Utilities Commission of Ohio, 113 O. S., 565:

> Syllabus. "1. Sections 614-86 to 614-102, inclusive, of the General Code of Ohio, are designed to regulate motor transportation, governing all motor vehicles operating over the highways of the state, but do not authorize the Public Utilities Commission to exclude motor transportation companies operating in interstate traffic from such highways.
>
> "2. Motor transportation companies operating in interstate traffic are subject to the provisions of said sections and the regulations therein provided may be applied to all interstate operators, except in so far as such application would involve a direct burden upon interstate commerce.

"3. A condition in a certificate of convenience and necessity granted to an interstate operation that passengers may not be received within the state of Ohio whose destinations are also within the state of Ohio is not an unreasonable condition, and does not operate as a direct burden upon interstate commerce."

Such a reasonable procedure gives every motor transportation company operating in Ohio a number, makes a record for such company both in the files of the commission and the state treasurer to whom the tax is paid, Sec. 614-94 (R., p. 77) and who distributes the same according to the mileage in each political sub-division, Sec. 614-97 (R., p. 79).

Under no other procedure could there be any orderly administration of the law.

The tax imposed is reasonable and lawful. Appellants are making the highways of Ohio their place of business. The highways are public property, and their use as a place of business by appellants and others as common carriers subjects such highways to unusual and unreasonable wear and tear. All operators in Ohio pay this extra tax for the repair of damage done. Should any court say when congress has taken no action that placing the same tax upon a citizen of Indiana as upon a citizen of Ohio is an undue burden or an interference with interstate commerce? The tax is on the motor vehicle and its use and is not payment for the certificate.

Similar taxes when applied equitably have been sustained by this court.

Hendrick v. Maryland, 235 U. S., 610;
Kane v. New Jersey, 242 U. S., 160;

The motor transportation law of Ohio has been held constitutional.

Royal Green Coach Company v. The Public Utilities Commission of Ohio, 110 O. S., p. 41.

Appellants have an adequate remedy at law. If, as contended by Clark and Riggs, they are not subject to the provisions of the motor transportation law they, any of their drivers or employees have a defense against any charges or prosecution.

The inspectors complained of have no police power, cannot arrest or prosecute except as witnesses. Such inspectors are appointed by the director of commerce of Ohio and under his supervision. The commission speaks through orders, rules and regulations. It has made no order in regard to the appellants, taken no action of any kind or character which will affect the appellants. Until willing to comply with the valid, enforceable sections of law and the reasonable and lawful orders of the commission there is no cause for injunction against any action of the commission in enforcing the valid and applicable provisions, particularly when the commission has taken no action.

CONCLUSION.

Clark and Riggs are common carriers.

They have not applied for a certificate of convenience and necessity under the Ohio law. They have made no offer to comply with any requirement of the law.

They complain of no specific order or action of the defendant. They have an adequate remedy at law.

The matters complained of are beyond the power of the commission to remedy.

The decree of the District Court therefore should be affirmed.

Respectfully submitted,

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Attorney General,
JOHN W. BRICKER,
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Of Counsel:
ALBERT M. CALLAND.

SUPREME COURT OF THE UNITED STATES.

No. 275.—October Term, 1926.

Benjamin H. Clark et al., *vs.* George T. Poor et al., constituting the Public Utilities Commission of Ohio.	Appeal from the District Court of the United States for the Southern District of Ohio.

[May 31, 1927.]

Mr. Justice Brandeis delivered the opinion of the Court.

The Ohio Motor Transportation Act of 1923 as amended, Gen. Code, §§ 614-84 to 614-102, provides that a motor transportation company desiring to operate within the State shall apply to the Public Utilities Commission for a certificate so to do and shall not begin to operate without first obtaining it; also, that such a company must pay, at the time of the issuance of the certificate and annually thereafter, a tax graduated according to the number and capacity of the vehicles used. §§ 614-87, 614-94.

Clark and Riggs operate as common carriers a motor truck line between Aurora, Indiana, and Cincinnati, Ohio, exclusively in interstate commerce. They ignored the provisions of the Act, and operated without applying for a certificate or paying the tax. Then they brought this suit, in the federal court for southern Ohio, to enjoin the Commission from enforcing as against them the provisions of the Act. The case was heard in the District Court before three judges on final hearing, under § 266 of the Judicial Code as amended by the Act of February 13, 1925. It appeared that while the Act calls the certificate one of "public convenience and necessity," the Commission had recognized, before this suit was begun, that, under *Buck* v. *Kuykendall*, 267 U. S. 307 and *Bush* v. *Maloy*, 267 U. S. 317, it had no discretion where the carrier was engaged exclusively in interstate commerce, and was willing to grant to plaintiffs a certificate upon application and compliance with other provisions of the law. *See Cannon Ball*

Transportation Co. v. *Public Utilities Commission*, 113 Ohio St. 565, 567. The bill was dismissed. It is here on direct appeal. This Court has jurisdiction as an interlocutory injunction had been applied for and a restraining order issued. *Moore* v. *Fidelity & Deposit Co.*, 272 U. S. 317, 320-321; *Smith* v. *Wilson*, No. 648, decided Feb. 21, 1927.

The plaintiffs claim that, as applied to them, the Act violates the commerce clause of the Federal Constitution. They insist that, as they are engaged exclusively in interstate commerce, they are not subject to regulation by the State; that it is without power to require that before using its highways they apply for and obtain a certificate; and that it is also without power to impose, in addition to the annual license fee demanded of all persons using automobiles on the highways, a tax upon them, under § 614-94, for the maintenance and repair of the highways and for the administration and enforcement of the laws governing the use of the same. The contrary is settled. The highways are public property. Users of them, although engaged exclusively in interstate commerce, are subject to regulation by the State to ensure safety and convenience and the conservation of the highways. *Morris* v. *Duby*, No. 372, decided April 18, 1927. Users of them, although engaged exclusively in interstate commerce, may be required to contribute to their cost and upkeep. Common carriers for hire, who make the highways their place of business, may properly be charged an extra tax for such use. *Hendrick* v. *Maryland*, 235 U. S. 610; *Kane* v. *New Jersey*, 242 U. S. 160; *Hess* v. *Pawloski*, No. 263, decided May 16, 1927. Compare *Packard* v. *Banton*, 264 U. S. 140, 144.

There is no suggestion that the tax discriminates against interstate commerce. Nor is it suggested that the tax is so large as to obstruct interstate commerce. It is said that all of the tax is not used for maintenance and repair of the highways; that some of it is used for defraying the expenses of the Commission in the administration or enforcement of the Act; and some for other purposes. This, if true, is immaterial. Since the tax is assessed for a proper purpose and is not objectionable in amount, the use to which the proceeds are put is not a matter which concerns the plaintiffs.

Plaintiffs urge that the decree should be reversed because of the provision in the Act concerning insurance. The Act provides that no certificate shall issue until a policy covering liability and cargo

insurance has been filed with the Commission. § 614-99. The lower court held that, under *Michigan Public Utilities Commission* v. *Duke*, 266 U. S. 570, this provision could not be applied to exclusively interstate carriers, *Red Ball Transit Co.* v. *Marshall*, 8 Fed. (2d) 635, 639; and counsel for the Commission stated in this Court that the requirement for insurance would not be insisted upon. Plaintiffs urge that because this was not conceded at the outset, it was error to deny the injunction. The circumstances were such that it was clearly within the discretion of the court to decline to issue an injunction; and since an injunction was the only relief sought, it properly dismissed the bill. Compare *Chicago G. W. Ry. Co.* v. *Kendall*, 266 U. S. 94, 100-101. The plaintiffs did not apply for a certificate or offer to pay the taxes. They refused or failed to do so, not because insurance was demanded, but because of their belief that, being engaged exclusively in interstate commerce, they could not be required to apply for a certificate or to pay the tax. Their claim was unfounded. Moreover, the Act made each section and part thereof independent and declared that "the holding of any section or part thereof to be void or ineffective for any cause shall not affect any other section or part thereof." § 614-102. And the Act also provided that it should apply to interstate commerce only in so far as such regulation was permitted by the Federal Constitution. § 614-101.

It is not clear whether the liability surance, for which the Act provides, is against loss resulting to third persons from the applicant's negligence in using the highways within the State, or is for loss to passengers resulting from such negligence, or for both purposes. We have no occasion to consider whether under any suggested interpretation, liability insurance, as distinguished from insurance on the interstate cargo, may be required of a carrier engaged wholly in interstate commerce. Compare *Hess* v. *Pawloski*, *supra*. The decree dismissing the bill is affirmed, but without prejudice to the right of the plaintiffs to seek appropriate relief by another suit if they should hereafter be required by the Commission to comply with conditions or provisions not warranted by law.

Affirmed.